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A *April 25* 81 *c/f*

<sup>complete</sup>  
COLLECTION  
OF  
STATE-TRIALS,  
AND  
PROCEEDINGS,  
UPON  
*HIGH-TREASON,*  
AND OTHER  
CRIMES and MISDEMEANOURS,  
FROM  
The Reign of King *EDWARD* VI.  
TO  
The Present T I M E.

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The E I G H T H V O L U M E.

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WITH  
TABLES to the VIIth and VIIIth SUPPLEMENTAL VOLUMES.

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The S E C O N D E D I T I O N.

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L O N D O N :

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M.DCC.LXVI.



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A Compleat

*This Day is Published,*

*Printed on a fine large Paper, in Folio, (with the Resolutions and Determinations of the House of Lords, in the several Controverted Cases,)*

**P**ROCEEDINGS, PRECEDENTS, and ARGUMENTS, on CLAIMS and CONTROVERSIES, concerning Baronies by Writ and other Honours.

WITH THE

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With an APPENDIX.

Containing several Papers copied from the Bodleian and Ashmolæan Libraries at Oxford, &c.

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A COMPLETE  
COLLECTION  
OF  
TRIALS, &c.

XLII. *Proceedings in Parliament upon the CASE of JAY and TOPHAM; and the Defence made by Sir Francis Pemberton, and Sir Thomas Jones, for their Judgment given therein.*  
1 Will. & Mariæ, 1689.



R. *Topham*, Serjeant, attending the House, having by his Petition complain'd, That he had been a great Sufferer by several Prosecutions at Law for executing the Orders of the House; and that having pleaded those Orders to the Jurisdiction of the Court of King's Bench, his Pleas had not been allow'd, but Judgment was given against him: The House refer'd the Examination and Consideration of this Matter to the Committee of Privileges. Accordingly the Committee met and examin'd the Matter.

*Sabbati 6<sup>o</sup> Julii, 1 Will. & Mar.*

Col. *Byrch* reported the Fact as it appear'd to the Committee, with the Opinion of the Committee thereupon, with which the House agreed, in these Words.

*Resolv'd,*

"That the House doth agree with the Committee, That the Judgment given by the Court of King's Bench in *Easter Term*, 34 *Car. II. Regis*, upon the Plea of *John Topham* (at the Suit of *John Jay*) to the Jurisdiction of that Court; and also the Judgments given against the said Mr. *Topham*, at the Suit of *Samuel Verdon*, *John Hiliard*, *Thomas Staples*, *Richard Elyth*, *John Nelson*, *Thomas Herbert*, *Nathaniel Reading*, and *Richard Harneage*, are

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"illegal, and a Violation of the Privileges of Parliament, and pernicious to the Rights of Parliament.

The House being inform'd, That Sir *Francis Pemberton* and Sir *Thomas Jones* were Judges of the King's Bench at that Time, order'd them to attend upon *Wednesday* next following.

*Mercurii 10 Julii 1689.*

The House being inform'd, That Sir *Francis Pemberton* and Sir *Thomas Jones* attended, pursuant to the Order of the House; Sir *Francis Pemberton* was first brought in, and Mr. Speaker spoke to him to this Effect.

Mr. *Speaker*. The House has been acquainted, there was an Action brought in the King's Bench in *Easter Term*, 34 *Car. II.* by one *Jay* against Serjeant *Topham*. To which Action he pleaded the Jurisdiction of this House; and that it proceeded to a Demurrer, and the Plea was over-rul'd by you as Chief Justice; so the House has sent for you to know upon what Ground you did it.

Sir *Francis Pemberton*. Sir, I know nothing of this Action, I have been out of the Court now six Years this Vacation. If I saw the Pleadings, it may be I might give you some Account of it, but I can't remember so many thousand Actions as were brought at that Time. But if you will let me know what the Charge is, I do not doubt

B

but



but I can give you a good Account of it. You say, Sir, he pleaded the Jurisdiction of this House.

Mr. Speaker. That is, there was a Plea to the Jurisdiction of the Court of King's Bench, That it was done by Order of this House, so it concerns the Jurisdiction of this House.

Sir Francis Pemberton. This is quite new to me, for I know not what I was sent for. You were pleased to summon me to attend, but I did not know for what, nor do I remember any such Action brought by Jay; I remember only an Action was brought by \* Verdon against Topham. And I remember there was a Motion made to us for a new Trial in the Case, where there was 500 l. Damages given: And we did give them a new Trial, for we thought it monstrous and unreasonable Damages.

Mr. Speaker. There were several Actions brought, but that which the House would be inform'd of, is the Action that was between John Jay and John Topham.

Sir Francis Pemberton. Under Favour, I can say nothing to this Action; but this I can say, if the Defendant should plead he did arrest him by the Command of this House, and should plead that to the Jurisdiction of the Court of King's Bench (I can say nothing to this particular Action, but) I think, with Submission, I can satisfy you, that such a Plea ought to be over-ruled, and I take it, the Law is very clear as to this; but as to what is laid to my Charge, with respect to this particular Action, if you please to give me some Time to look into the Records of the Court.

Mr. Speaker. The House will consider of it, if you please to withdraw, and then give you their Resolution.

Sir Francis Pemberton withdraws.

Sir Thomas Jones brought in.

Mr. Speaker. Sir Thomas Jones, the Occasion the House sent for you is this: They have been acquainted, that in the Time of King Charles the Second, in the thirty fourth Year of his Reign, there was an Action brought by one Jay against Mr. Topham, that then was, and now is, Serjeant of the House of Commons. To which he pleaded, That what he did was by Order of the House; and this he pleaded to the Jurisdiction of the Court of King's Bench at that Time; they desire to know if you gave the Judgment, and upon what Reason.

Sir Thomas Jones. 'Tis so long ago I do not remember it, 'tis above seven Years ago, and I had not Notice at all of the Cause I was commanded to attend you upon; whether I did give any such Judgment or no, it will appear by the Record itself.

Mr. Speaker. We have examin'd the Officers, and they give us an Account, That Sir Francis Pemberton was Chief Justice, and you another Judge then.

Sir Thomas Jones. I was a Judge of the Court at that Time, but I cannot certainly say, we did give Judgment to over-rule the Plea; I hope, if we did, it was according to Law.

Mr. Speaker. Well, Sir, you may withdraw if you please.

Sir Thomas Jones withdraws.

Sir Francis Pemberton brought in again.

Mr. Speaker. Sir Francis Pemberton, the House took Notice when you were in before, you said,

when an Order of this House was pleaded to the Jurisdiction of the King's Bench, you conceived by the Law it ought to be over-ruled; and that you could give those Reasons that would satisfy the House it was so; they expect you should give them now.

Sir Francis Pemberton. Mr. Speaker, as to this Question concerning this particular Case, I know nothing, I know not what the Pleading was.

Mr. Speaker. The House does not expect any thing of your Answer as to this particular Case; but you seem'd to make your Assertion general, and therefore they desire to hear what you can say as to your general Assertion.

Sir Francis Pemberton. To satisfy the House of all together, I would desire to look into this particular Case; for I do not know whether I was Judge or not then: If they will give me some time, I will give them an Account of the whole.

Mr. Speaker. The House expects to have some Account now of what you said, that a Plea to the Jurisdiction of the Court of King's Bench ought to be over-ruled.

Sir Francis Pemberton. If they please, since they charge me with this particular Case, I will answer to the whole together.

Mr. Speaker. Well, Sir, if you please to withdraw.

Sir Francis Pemberton withdraws.

He is brought in again.

Mr. Speaker. Sir Francis Pemberton, the House did take Notice that you did affirm here, that if an Order of this House was pleaded to the Jurisdiction of the Court of King's Bench, that it ought to be over-ruled, and that you take the Law to be clearly so, and that you thought you could satisfy the House in that Point. This is a general Assertion, and they require nothing as to the particular Case; but they do require you, that you would give them your Reasons why you maintain this Opinion.

Sir Francis Pemberton. The Question that was put to me by yourself was a new Question to me: I heard nothing concerning it; nor did I know what it was that would be put to me. I did tell you my present Apprehensions of the Case you put; I did not speak of an Order of the House in general, but the Order that was in this Case, of the Order of taking him into Custody: That was the Question proposed to me. I had no Reasons to speak of the Orders of the House in general, I can give no Account of them; but 'tis *quoad hoc*, Whether the Order for taking him into Custody was pleadable to the Jurisdiction, I did apprehend by the Law it was not pleadable: If I was understood in any other Sense, I beg your Pardon, for I spake it *quoad hoc*. The Case of Jay 'tis, I think, which was, It being the Order of the House to take him into Custody, that being pleaded to the Jurisdiction of the Court of King's Bench, whether that ought to be allow'd or no? Therefore if it be look'd upon as if I spake in general, I did not adapt my Words as I should, but that is my Meaning.

Mr. Speaker. That comes much to the same Purpose, under Favour: You say, an Order of this House being pleaded in this particular Case to the Jurisdiction of the King's Bench, that Order ought to be over-ruled.

Sir

\* Vid. Verdon's Case in Sir Tho. Jones's Reports, p. 208.



Sir Francis Pemberton. I beg your Pardon, the Plea.

Mr. Speaker. Ay, the Plea.

Sir Francis Pemberton. It must be in Cases of like Nature. I do not make such a general Assertion, (but speak as to this particular Case) I do not know how far that may go; and I hope the House won't desire my Opinion in that, I did not dream of it; we were upon this single Point. And I must tell you, I did not apprehend any such Thing would be put unto me. As to the Justification of this, I can't, may be, upon the sudden be prepared with such Reasons as will satisfy the House; if they put it upon me to tell my present Apprehensions, that is another Thing.

Mr. Speaker. I believe the House will be willing to hear your present Apprehensions.

Sir Francis Pemberton. That may be with some Prejudice to the Law, I only tell you my present Apprehensions: If you will give me Time to give you my Reasons, I will give you my Reasons as well as I can; but you cannot expect I should be furnish'd with such Reasons now, as I may upon further Thought.

I must premise this to you, That the Jurisdiction of this House I do not take to be in question, nor the Validity of their Orders. I think there is no Judge, that understands himself, but will allow the Privileges of this House, they are the Privileges of the Nation, and we are all bound to maintain them as much as any Member of the House.

But the Question is here now *de modo*. 'Tis agreed on all Hands, the taking him into Custody is justifiable; but the Question is (*de modo*) whether pleadable by way of Jurisdiction, or in Bar; and therefore I do not look upon the Privileges of this House as at all in Question; I only state what I apprehend the Case and Matter to be. If the House press me to declare my present Opinion of it, I must desire I may enlarge myself, if there be Occasion for it; it can't be expected I should be prepared to answer all Things.

Mr. Speaker. There is no doubt the House will not tie you up.

Sir Francis Pemberton. The Question is of the Manner of pleading this Order of the House; and the Question is, Whether it may be to the Jurisdiction of the Court, or not?

And, under Favour, I have always taken it, that such a Plea could not be pleaded to the Jurisdiction of the Court, but 'tis a good Plea by way of Bar. Any Man that understands the Law of England, makes a wide Difference between the pleading to the Jurisdiction, and in Bar: And I must tell you, that I take it, that nothing which is pleadable in Bar is pleadable to the Jurisdiction, they are several Manners of Pleading. The Justification here is a proper Matter of Bar, and 'tis a good Justification; but whether the Court shall be excluded their Jurisdiction, that they shall not know whether this be true or no, is the Question? For if this be pleaded to the Jurisdiction, there is an End of it. Whether Mr. Topham had such an Order or not, can't be a Question upon a Plea to the Jurisdiction, for the Hands of the Court are tied up; and therefore whenever there is a Plea to the Jurisdiction, because the Court cannot examine the Fact, they swear to their Plea.

Now here 'tis allow'd by all People living, I think no Judge ever denied it, that the Order of this House was sufficient to take any one into Custody. No Judge, I presume, ever thought otherwise; but if this be pleaded to the Jurisdiction here, the Hands of the Court are closed: So that whether he had such an Order or not, is not to be enquired of by the Court. But if it be pleaded in Bar, so 'tis a good Bar, and he will have as much Advantage as any, and all People must allow 'tis a good Bar. Therefore I would pray you that you would consider, that in this Case here is nothing of your Privileges, nothing of the Jurisdiction of this Court is call'd in question, but only the Manner of making use of it. There are Acts of Parliament; he that does any thing under an Act of Parliament, does it under as high an Authority, as he that acts under the Authority of this House, for that is the Authority of this Nation. Yet in those Cases, though you are tender that none be prejudiced acting by that Authority, yet you have never made any Provision that it might be pleaded to the Jurisdiction. In the Case of the Commission of Sewers, where they justify by your Authority, and the whole Nation's, though you have allowed them as beneficial a way of Pleading as can be, yet 'tis by way of Bar, not to the Jurisdiction of the Court. They say it is done by the Authority of the Commission of the Sewers, but they do not plead it to the Jurisdiction. This I did in pursuance of the late Act for Sewers, and therefore you are to examine it no further. This never was allowed, nor the Parliament designed no such Thing.

In this Case, if Mr. Topham comes and pleads this by way of Bar, no Court will deny but it is a good Justification, he has answered to the Thing, and justified what he has done. Your Authority will be allowed, but the Question is, Whether this shall stop the Court that they shall not examine it? For any Man living may plead such a Plea. Now the putting him to plead this by way of Bar, is only to see whether what he hath pleaded is true. As to all other Cases, when you allow that where they do any thing in Prosecution of an Act of Parliament, they shall give the general Issue in Evidence, this is by way of Bar, you do in no Case oust the Court of its Jurisdiction. The King's Bench hath a general Jurisdiction to examine the Things that are done whether fairly or not. This Plea is allowable, and ought to be allow'd to any Action of Trespass to be brought. But, under Favour, I must submit it to you: I take the Law to be manifestly plain, That by way of Plea to the Jurisdiction it cannot be, but it ought to be over-ruled, to put him to plead it by way of Bar, where he will have as full Advantage. This is my present Apprehension.

Then Sir Francis Pemberton being withdrawn, a Question was put for adjourning the Debate, and it pass'd in the Negative; and the House Resolv'd,

" That the Orders and Proceedings of the House being pleaded to the Jurisdiction of the Court of King's Bench, ought not to be over-ruled.

And Sir Francis Pemberton, and Sir Thomas Jones were order'd to attend again, to give what further Reasons they could for the Maintenance of their Judgment.



Veneris 19 Julii 1689.

Sir Francis Pemberton and Sir Thomas Jones attending, Sir Francis was first brought in.

Mr. Speaker. Sir Francis Pemberton, the House appointed you to attend formerly (but they have been prevented by other Business) to give the Reasons of your Judgment *int' Jay & Topham*.

Sir Francis Pemberton. Mr. Speaker, This Case was an Action of Trespass, and it was brought by Jay against Topham, for arresting and detaining him in Prison by the space of ten Days, and keeping him 'till he paid him 30*l.* to let him out of Prison, by which Means many of his Affairs were lost, and left in that Time undone, which is a common Action at Common Law.

To this the Defendant he comes and pleads, That there was an Order of this House, made in March, 32 Car. II. (the Action is in the 34 in May,) for taking of this Jay into Custody, and to bring him to the Bar of the House; and says, that by virtue of that Order he took him and detain'd him, with an Intention to bring him to the Bar of this House. And this he pleads to the Jurisdiction of the Court, that the Court had nothing to do with it, nor ought further to examine this Matter. And upon that there was a Demurrer, and upon the Demurrer it was by the Court adjudged, that he should answer over; that is, that he should plead in Bar of the Action: And this is all that I can discern by the Case.

Now, Sir, as to the Reasons, since this House is pleased to command me, I will shortly tell you what my Apprehensions were, and upon what Account we went in this Case. When this Action was pleaded to the Jurisdiction of this Court, I consider'd, and could find no Judgment at all against the Jurisdiction of this Court in any such Case, nor any Vote of this House, or any Thing or Order against it at all. The Case that came nearest it, was the Case of Sir John Elliot, where there was an Information for some Misbehaviour in this House, against Sir John Elliot, and others: They did there plead to the Jurisdiction of the Court, and there the Court over-ruled it. It is true, afterwards, upon the Return of King Charles II. there was a Writ of Error brought upon that Judgment, and Errors assign'd in the Lords House, and the Judgment was reversed; but there was no Error assigned in over-ruling the Plea to the Jurisdiction of the Court, but only this, that it was in the Body of the Information said, That they did speak some Words in Parliament which the Court of King's Bench could not try, because by the Judgment of the Lords House they were not cognizable at Law; for the Members of this House have always had a Freedom of Speech here: And upon that Account it was reversed. But I must tell you, that in my Lord Vaughan's Report he did allow, that as to the Mis carriage that was alledged in laying Hands upon the Speaker, the Court of King's Bench had a Jurisdiction. *Vide Vol. 7.*

And finding no Footsteps of Law, nor any thing of this Honourable House that could direct us, I did consider then what was reasonable and fitting to be done; I knew we had a Jurisdiction in the Case of such an Action as this is, and I found the Objection against it was only one: That this House was a superior Court, of a higher Nature than the King's Bench, and of a

greater Authority; and that the King's Bench had nothing to do to inspect the Actions of this House, or to examine what was done by virtue of any Order of this House. And then, on the other side, I consider'd, if the Courts of Law could not examine it, that there would be a Cause struck off by a bare Allegation, without any more to do: For if we had no Cognizance of it, if we could not examine the Matters that were done in Pursuance of the Order of this House, how could we impanel a Jury, and to what Purpose should we try it? For if it were found against him that he had exceeded his Authority, if we could not give Damages for it, what should we examine it for? I thought that the Consequence of this would be, That that which was alledged to be a disorderly Execution of the Vote, must be struck off by a bare Allegation.

Sir, This coming before us in a judicial Way, and we being to do something in it, either throw out the Cause, or over-rule the Plea to the Jurisdiction; I thought it most reasonable that this Thing should be examined in that Court.

Then I consider'd, that where Justifications are made by Virtue of Acts of Parliament, and every Body must acknowledge that Court is of a higher Nature than the King's Bench, yet that was not enough to exclude the King's Courts from their Jurisdiction.

I consider'd in Cases where Justification is made by Act of Parliament, there is a Justification by as high an Authority as this is, that will be allowed on all hands; for there are not only the Orders of this House, but the Authority of the House of Lords. You have in those Cases fenced the Matter as well as can be imagined, and taken as much Care to protect them; given some Power to plead summarily, others to plead Not Guilty, and justify by giving the special Matter in Evidence. But I never heard that there was any Provision made for the Pleading to the Jurisdiction, though it was done by a higher Authority: Therefore I thought that the high Authority and high Nature of this Court, could not exempt the King's Bench, being a Court of Law, to examine, whether what was alledged to be done, was done in pursuance of your Authority, or not?

Then I did consider with my self, that if this Plea should be over-ruled, the Defendant was at no Prejudice, for the same Matter might be pleaded by way of Bar. And it would have been admitted a good Bar if true, and he could have no Manner of Prejudice that I know of by pleading as the Court directs. We did not question the Legality of your Orders, nor the Power of them; but the great Business was, Whether he had pursu'd this Order of the House of Commons, and that was the thing properly examinable. But on the other Side, it would be a monstrous Mischief to the Plaintiffs if such a Plea was allow'd to the Jurisdiction; for it would be agreed on all hands if Mr. Topham had abus'd his Authority, and done any outrageous thing; if, when he had an Order to bring a Member to the Bar of this House, he had kept him extravagantly, and not brought him thither, but exacted Money of him; if the Case in Fact was so, it is certain he ought to have been punished, and to return Damages to the Person injured.

Then



Then in this Case, you know, Mr. *Speaker*, That this House sometimes hath a Recess, and Parliaments have Intervals. When this Court hath a Recess, and the Parliament is dissolved, (as there are many Years sometimes when there is no Parliament,) then in the Recess of Parliament, (supposing there was a good Order, and a Man had a Damage by the Abuse of this Order in the mis-execution of it,) 'tis reasonable this Man should be satisfy'd. But peradventure a Parliament may not come in three or four Years, perhaps six or seven Years, in that Case he would lose his Action.

But that is not all, for in this Case if we could not examine it, the Man would be without any Remedy in the World. So that if one of your Officers should abuse your Orders, the Person that he hath abus'd could have no Help, if the Courts of Law could not help him. This was my Apprehension: This Court we know may examine their Officers so as to punish them for it; but I never heard nor understood that this Court could go in such a Method as to give Damages; for, first, in this Case, the Method of the Law would be precluded: We know what are the Methods of a Man's obtaining Damages; first, he must prove his Fact by Witnesses; I never heard this Honourable Court did condescend so far as to give an Oath; next, they must be assayed by a Jury: There is no other Way as I know of at all: I never knew this Court take upon them to assess Damages at all.

In the next Place, if they could arrive at the Matter of Damages, I never knew any Judgment given, or Execution awarded for Damages by this Honourable Court. So that my Apprehensions were, that unless the Courts at Law had Jurisdiction of all such Actions as these were, this Man must be remediless if he had Wrong: On the other Side, he would have recovered no Damages if he had none. No Man would have said, That the House should not have made such an Order, or he should not have executed it such a way as you intended it.

Mr. *Speaker*, These were my Apprehensions in this Case; I consider'd it as well as I could, and did see a great Mischief on one Side, if the ordinary Courts of Law had no Jurisdiction, and could apprehend none if they had, in seeing whether the Orders of this House were fairly executed or no, when I am confident that none of this House would allow there should be any Abuse of their Order.

These being my Apprehensions as a Judge of the Court, I did think that I was bound to over-rule the Plea that was to the Jurisdiction of the Court. If I was mistaken in this Case, it was an Error of my Judgment, I had no mind or design to meddle with the Affairs of the House, nor to pry into what was done here, my Design was to do Justice. What Weight these Things have with others, I must leave with this Honourable House: But this was that *that* induced me to give my Opinion for the over-ruling of the Plea.

Mr. *Speaker*. Did you deliver these Reasons in open Court when you gave Judgment?

Sir Francis Pemberton. No, we very rarely give any Reasons in such Cases.

Mr. *Speaker*. Because if you had given these Reasons, it would have been some Light to the *Serjeant* to have pleaded afterwards.

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Sir Francis Pemberton. I do not know truly what he did afterwards; but this I am sure he was told, that he might have pleaded this Matter in Bar, and this would have been a good Bar, and this I thought Direction enough.

Mr. *Speaker*. Is it not usual in Cases of great Moment, as this was, to argue the Point in giving Judgment?

Sir Francis Pemberton. It is so if they will argue it; but if the Counsel on both Sides let it go, we examine no further.

Sir Francis Pemberton withdrew.

Sir Thomas Jones brought in.

Mr. *Speaker*. The Occasion I suppose you know of your being sent for; 'tis to know upon what Reasons you over-rul'd the Plea to the Jurisdiction between Jay and Topham.

Sir Thomas Jones. Mr. *Speaker*, in the first Place, I seriously profess before God, and this Honourable House, That I never design'd to interfere with the Authority and Privileges of this House. I have had the Honour to be an unworthy Member of it in two several Parliaments; and truly I did always conceive, that for any thing transacted in this House, no other Court had any Jurisdiction to hear and determine it: And therefore I was always of Opinion, That the Judgment given in the Case of Sir John Elliot and my Lord Hollis, was a very erroneous and unjustifiable Judgment; [See Vol. VII. Page 249.] and the rather, because I knew that there was an Act of Parliament, that for any thing done in this House, by speaking, debating, or any reasoning whatsoever, there ought to be no Suit in Accusation or Condemnation concerning it, 'tis utterly void.

But, Sir, when I did give this Judgment, I do confess I did think there was a Difference to be taken in Matters that were merely transacted by this House, and may be complicated of the Authority and Commands of this House, and of the Execution of the Authority and Commands of this House abroad; and that was the Case that was before us in the King's Bench.

Mr. Topham was complain'd of, that he had not only imprison'd the Plaintiff Jay, but kept him in Prison till he had paid him 30*l*. Now I did humbly conceive that this Declaration ought to be answer'd, and not to be put off with a Plea to the Jurisdiction of the Court.

'Tis true, as I did say, Where the intire Matter is transacted in this House, there a Plea to the Jurisdiction of the Court is proper; but in the present Case I did conceive, That Jurisdiction was most proper that could try and determine the whole Merits of the Cause between both the Parties, especially where the Privileges of this House would no way suffer nor be injur'd. Thereupon I think Mr. Topham was advis'd and told, that he ought to plead this Matter in Bar, wherein there would be full Consideration, and perfect Regard given to the Commands and Authority of this House, and all imaginable Reverence: If he had but produc'd a Copy at most of your Journal, that had been sufficient, and no Judge would have been so silly, or imprudent at least, to have said, that had not been a good and sufficient Authority. But Mr. Topham thinks it not fit at all to answer in this Plea to the taking the 30*l*. for which, if it was Extortion upon the Subject, I am sure that whosoever has a Care of the Rights of the Subject,



as you have, would not have suffer'd the Subject to have gone without Remedy and Satisfaction.

Sir, as to what may be said in this Case, that upon complaint to you, you would have punish'd Mr. *Topham*; give me leave to say, that I think at that time when Mr. *Topham* had this Prisoner in Custody, you were risen. But besides, to let that go, I do conceive, and I never found it in my Experience, when I was an unworthy Member of this House, That you have ever given Damage to a Party that was injur'd by your Officer. 'Tis true, you would punish your Officer for the Injury, but I never knew the Party injur'd have any Satisfaction.

Sir, another Reason is this, The Authority of this Court argues very great; but with all Reverence be it spoken to the Authority of this House, The Authority of an Act of Parliament is greater than the Authority of this Court: For although for the most part in Acts of Parliament you have the first Production and Formation of the Acts of Parliament, yet without the Consent of the Lords, without the Royal Assent of the King, 'tis no Law. But when 'tis a Law by all these Authorities, not only by yours, but by the Consent of the Lords; in Case one Man does any thing by Virtue of a Command of such an Act of Parliament, suppose it be under the Commissioners of Sewers, or in the executing of a Rate for the Poor, or raising your Poll Act; if any other Man shall be so hardy as to question his doing his Duty according to your Commands, the Party so question'd, is either to plead in Bar especially, or, which indeed you have provided for the Ease of Pleading in many Cases, he may plead it generally, and give in Evidence the special Matter: But it never was known that any Man should offer to say, I was an Officer by Act of Parliament, and therefore demand, Whether you will take Cognizance of the Matter, having done what I did by Act of Parliament.

AND if it be so in Cases of Acts of Parliament, as no body will deny, then I thought it might be so when there was only a Command of the House to do such a thing (the Reverence to which would have been perceiv'd if there had been a Plea in Bar,) and there was an Abuse of your Order, in the exacting thirty Pounds complain'd of: And I thought the rather so, because of the Act of Parliament I mention'd, 4 H. 8. c. 8. which does provide, that there shall be no Prosecution, or Suit, for any Trouble or Grievance that is done in this House, and makes it void. But it goes further, (it orders no Plea indeed one way or other, either in Bar, or to the Jurisdiction, but) in the Close of the Act it says, That if any the Persons thereafter should be vex'd, troubled, or otherways charg'd for any Cause as aforesaid; then he, or they, so troubled for the same, should

have an Action of the Case against every such Person or Persons so vexing and troubling them, and recover treble Damages and Costs.

And upon these Reasons, Sir, I did give my Opinion at that time, that the Plea to the Jurisdiction of the Court should be over-ruled; which if not agreeable to your Judgment, I most humbly beg your Pardon for it.

Mr. *Speaker*. Did you deliver these Reasons in Court, when you gave Judgment for over-ruling the Plea?

Sir *Thomas Jones*. Truly, Sir, I can't say we did, nor can't say we were demanded our Reasons, nor can't say any thing was mov'd in arrest of Judgment, or shew'd to us why we should give our Reasons; but I believe Mr. *Topham* will not say but he was advis'd, that it was proper for him to plead it in Bar, and then all Right would have been done to the Authority of this Court, and to Mr. *Topham*, as well as to the Plaintiff.

Mr. *Speaker*. It would have been a Satisfaction to Mr. *Topham* and the whole Kingdom, if you had given your Reasons; and we take it, that upon Demurrers of great Consequence, the Court uses to give the Reasons of their Judgments.

Sir *Thomas Jones*. Truly 'tis so long ago, I am not able to say whether we did, or did not; but 'tis not usual for Judgment to be given *seriatim*, if all the Judges of the Court be agreed in the Thing, as they were in this Case.

Mr. *Speaker*. Where the Judges agree, the Lord Chief Justice gives the Opinion of the Court; but then in Matters of this Moment, he usually gives the Reason.

Sir *Thomas Jones*. As far as I told you before, we did give the Reason, that it was more proper to be a Plea in Bar, than to the Jurisdiction of the Court.

*Then Sir Thomas Jones withdrew, and the House after a Debate*

*Resolved,*

" That Sir *Francis Pemberton*, giving Judgment to over-rule the Plea to the Jurisdiction of the Court of King's Bench, in the Case between *Jay* and *Topham*, had broken the Privileges of the House. And also,

*Resolved,*

" That Sir *Thomas Jones*, giving Judgment to over-rule the Plea to the Jurisdiction of the Court of King's Bench, in the Case between *Jay* and *Topham*, had broken the Privileges of the House.

And by Order of the House, both Sir *Francis Pemberton*, and Sir *Thomas Jones*, were taken into Custody for the said Breach of Privilege, and lay till there came a Prorogation.



XLIII. *Proceedings before the House of LORDS, (from Jan. 7, 1691, to the 17th of Feb. following,) between the Duke and Dutchess of Norfolk, upon the Duke's Bill, Intituled, An Act to Dissolve the Marriage, &c. 3 W. & M.*

The 7th of January the said Bill was lodg'd in the House of Lords.

The 8th of January.

THE Dutchess of Norfolk having received Intimation, that the Duke of Norfolk was this Day offering a Bill to the House of Lords, for dissolving the Marriage between them, and that the same was under Debate before their Lordships; She was advis'd to present the following Petition.

*To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.*

*The humble Petition of Mary Dutchess of Norfolk.*

Sheweth,

THAT your Petitioner being informed, that the Duke of Norfolk is at this Time offering a Bill to your Lordships, for dissolving the Marriage between him and your Petitioner,

Your Petitioner humbly prays she may be heard by your Lordships, before such Bill be received.

And your Petitioner will ever pray, &c.  
*M. Norfolk.*

Upon which Petition, their Lordships were pleas'd to make the following Order, *viz.*

*Die Veneris 8 Januarii, 1691.*

A Bill having been offer'd to this House, on the Behalf of the Duke of Norfolk, to dissolve the Marriage between the said Duke and his Dutchess; It was order'd by the Lords Spiritual and Temporal in Parliament assembled, that Her Grace shall have Notice thereof, and may be heard by her Counsel, at the Bar of this House, on Tuesday next at twelve of the Clock, what she hath to object against the receiving the said Bill: At which Time the said Duke may also be heard by his Counsel, for the said Bill, if he shall think fit.

*Matth. Johnson, Cler' Parliamentor'.*

*Die Martis 12 Januarii, 1691.*

After hearing Counsel this Day, at the Bar, what they could object for her Grace the Dutchess of Norfolk, against the receiving of a Bill offer'd by his Grace the Duke of Norfolk, to dissolve the Marriage between him and his Dutchess: As also the Counsel of his Grace the Duke of Norfolk for receiving the said Bill. And after Consideration of what was offer'd by Counsel, on either Side, and a long Debate thereupon:

This Question was put,  
*Whether the Duke of Norfolk's Bill should be received?* It was resolv'd in the Affirmative.

Which Bill is as followeth.

*An Act to dissolve the Marriage of Henry Duke of Norfolk, Earl Marshal of England, with the Lady Mary Mordant, and to enable the said Duke to marry again.*

FORASMUCH as Henry Duke of Norfolk, and Earl Marshal of England, having been married to the Lady Mary Mordant, hath made full Proof that his said Wife is guilty of, and hath committed Adultery on her Part: And forasmuch as the said Henry Duke of Norfolk hath no Issue, nor can have any probable Expectation of Posterity to succeed him in his Honours, Dignities and Estate, unless the said Marriage be declared void, by Authority of Parliament, and the said Duke be enabled to marry any other Woman. The King and Queen's Most Excellent Majesties, upon the humble Petition of the said Henry Duke of Norfolk, having taken the Premises into their Royal Consideration, for divers weighty Reasons, are pleas'd that it be Enacted, And be it Enacted, by the King and Queen's Most Excellent Majesties, and by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Marriage between the said Henry Duke of Norfolk, and the said Lady Mary his Wife, shall from henceforth be null and void; and is by Authority of this present Parliament Declared, Adjudged, and Enacted to be null, and void, to all Intents, Constructions, and Purposes whatsoever. And that it shall and may be lawful to, and for the said Henry Duke of Norfolk, at any time, or times, hereafter, to contract Matrimony, and to marry (as well in the Life-time of the said Lady Mary, as if she were naturally dead,) with any other Woman, or Women, with whom he might lawfully marry, in Case the said Lady Mary was not living: And that such Matrimony, when had and celebrated, shall be a good, just, and lawful Marriage, and so shall be adjudged, deemed and taken, to all Intents, Constructions and Purposes. And that all and every Children, and Child born in such Matrimony, shall be deemed, adjudged and taken, to be born in lawful Wedlock, and to be Legitimate and Inheritable, and shall inherit the said Dukedom of Norfolk, Office of Earl Marshal of England, and all other Earldoms, Dignities, Baronies, Honours, and Titles of Honour, Lands, Tenements, and other Hereditaments, from, and by, their Fathers, Mothers, and other Ancestors, in like Manner and Form, as any other Child, or Children, born in lawful Matrimony, shall or may inherit, or be inheritable, according to the Course of Inheritances used in this Realm: And to have and enjoy all Privileges, Preeminences, Benefits, Advantages, Claims and Demands, as any other Child, or Children, born in lawful Wedlock, may have, or claim, by the Laws or Customs of this Kingdom.



dom. And be it further Enacted, That the said *Henry Duke of Norfolk*, shall be intituled to be Tenant, by Courtesy, of the Lands and Inheritance of such Wife, whom he shall hereafter marry: And such Wife as he shall so marry, shall be intituled to a Dower of the Lands and Tenements of the said *Henry Duke of Norfolk*, and of such Estate whereof she shall be Dowable, as any other Husband, or Wife, may, or might claim, have, or enjoy: And the Child, or Children, born in such Marriage, shall, and may, derive and make Title, by Descent, or otherwise, to, and from any their Ancestors, as any other Child, or Children may do, any Law, Statute, Restraint, Prohibition, Ordinance, Canon, Constitution, Prescription or Custom, had, made, exercised, or used to the contrary of the Premises, or any of them, in any wise notwithstanding. And be it further Enacted, by the Authority aforesaid, That the said Lady *Mary* shall be, and is hereby barred and excluded of, and from all Dower and Thirds, and of, and from, all Right and Title of Dower, and Thirds, unto, or out of any the Honours, Manors, Lands, or Hereditaments of the said Duke. And that all Conveyances, Jointures, Settlements, Limitations and Creations of Uses and Trusts, of, into, or out of, any Honours, Manors, Lands or Hereditaments, at any time heretofore made by the said Duke, or any of his Ancestors, or Trustees, unto, or upon, or for the Use or Benefit of the said Lady *Mary*, or any the Issue of her Body, or for raising, discharging, or counter-securing any the Manors, Lands, or Hereditaments of the said Lady *Mary*, or any of her Ancestors, shall be from henceforth utterly void, and of none Effect: And all and every the said Honours, Manors, Lands, or Hereditaments of the said Duke, or any of his Ancestors, or Trustees, shall from henceforth remain, and be to, and for, the Use and Benefit of the said Duke, and such other Person, or Persons, and for such Estates and Interests, and in such Manner and Form, as if the said Lady *Mary* was now naturally dead, without any Issue of her Body. And also, That all Limitations and Creations, of any Use, Estate, Power, or Trust, made by any of the Ancestors of the said Lady *Mary*, unto, or for the Use or Benefit of the said Duke, his Heirs or Assigns, out of any the Manors, Lands, or Hereditaments, of any of the Ancestors of the said Lady *Mary*, shall be from henceforth void, and of none Effect.

REASONS offer'd to the Lords in Parliament, for receiving the before mentioned Bill of Divorce, on the Behalf of his Grace the Duke of Norfolk.

THE not having a Sentence for a Separation from the Ecclesiastical Court, is thought to be no Objection against the receiving or passing the Duke of Norfolk's Bill, for these Reasons, viz.

I. The House proceeds, in this Case, in their Legislative, and in their judicial Capacity; and in their Legislative, all Things must proceed Originally, by Bill.

II. That a Sentence in the Ecclesiastical Court, can give the Duke no Relief, as to what he seeks by his Bill, viz. To dissolve his Marriage, and enable him to marry again; but that Relief must spring originally from the Parliament, without Relation to the Ecclesiastical Court.

III. That in Case there was such a Sentence, yet it would afford no Assistance in this Case: For the Parliament, in Cases of this Nature, do not rely upon any such Sentence, for a satisfactory Proof of the Fact; but hear Witnesses *viva voce*, and thereupon proceed.

IV. That there are Witnesses now living, to prove the Fact, which may be examined *viva voce*; whereas, if they die during the tedious Proceeding in any inferior Court, then there can be no other Proof, but Depositions taken in Writing.

V. That Mrs. *Wharton's* Case was receiv'd Originally in Parliament.

13 Januarii, 1691.

The Duke of Norfolk's Bill aforesaid, having been Yesterday received and read; the Dutcheſs of Norfolk presented the following Petition to their Lordships this Day.

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble Petition of Mary Dutcheſs of Norfolk.

Sheweth,

THAT your Petitioner being married to the Duke of Norfolk fourteen Years and upwards, never had, or received from her Husband, any Intimation of a Misdemeanor, on her Part, against him; which, joined to her Innocency of the Crime mentioned in the Bill, makes this Proceeding before your Lordships very surprizing to her: Her Person, Estate, and Honour, which is more dear to her than her Life, being now brought in Question.

Your Petitioner humbly prays she may have a Copy of the particular Charge against her, with the Names of the Witnesses, and reasonable Time allowed her to answer the same, before any farther Proceedings upon the Bill.

Mary Norfolk.

Upon which Petition, the following Order was made.

Die Mercurii 13 Januarii, 1691.

Upon reading the Petition of Mary Dutcheſs of Norfolk, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Sir *Richard Reynes*, Sir *Charles Hedges*, and Dr. *Oxenden*, do attend this House to Morrow at ten of the Clock in the Forenoon.

Matth. Johnson, Cler' Parliamentor'.

14 Januarii, 1691. After having heard the Civil Lawyers, the following Order was made.

Die Jovis 14 Januarii, 1691.

After hearing this Day the Civil Lawyers, pursuant to the Order Yesterday, upon reading the Dutcheſs of Norfolk's Petition, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That his Grace the Duke of Norfolk shall bring in the Charge against his Dutcheſs, and particularly to the Person, Time and Place, by Saturday next, at 12 of the Clock.

Matth. Johnson, Cler' Parliamentor'.

1691.

and his Dutcheſs, for a Divorce.

9

16 Januarii, 1691.

This Day the Duke of Norfolk brought in the following Charge against his Dutcheſs.

*The Charge which Henry Duke of Norfolk, Earl Marshal of England, doth exhibit against his Wife Mary Dutcheſs of Norfolk, before the Lords Spiritual and Temporal in Parliament assembled, pursuant to their Lordships Order of the 14th of January, 1691, is for the Crime of Adultery.*

THE Person charg'd to commit the said Crime with the said Dutcheſs, is *John Germaine*, of the Parish of St. Margaret's, in the Liberty of Westminster.

The Times when the said Crime was committed, were between the Months of June and December, 1685, and several Times since.

The Places where the said Crime was committed, are at *Whitehall*, *Windsor*, and within the Parishes of St. Margaret's Westminster, St. Martin's in the Fields, St. James's, St. Ann's within the Liberty of Westminster: And in the Parish of Lambeth, in the County of Surrey.

Norfolk, and Marshal.

Upon which the following Order was made.

*Die Sabbati, 16 Januarii, 1691.*

Upon reading, this Day, the Charge, which Henry Duke of Norfolk, Earl Marshal of England, hath exhibited against his Wife, Mary Dutcheſs of Norfolk, for the Crime of Adultery: It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That her Grace the Dutcheſs of Norfolk do attend this House on Monday next, or some Person on her Behalf, then to receive a Copy of the Charge against her.

*Matth. Johnson, Cler' Parliamentor'.*

19 Januarii, 1691.

*The Answer of Mary Dutcheſs of Norfolk, to the Charge exhibited against her by the Duke of Norfolk, before the Lords Spiritual and Temporal in Parliament assembled.*

THIS Respondent is advised, that the Charge exhibited by the Duke of Norfolk into this Honourable House against her, as to Time, and Place, is too general, and is not pursuant, nor doth answer the End of your Lordships Order, of the 14th Instant, made upon the humble Petition of this Respondent. Wherefore she doth humbly hope, and pray, your Lordships will not oblige her to make any further Answer, 'till the Duke shall bring in a particular and certain Charge, as to Time and Place, against her.

And this Respondent doth the rather humbly insist, That your Lordships would please to require the Duke to be particular, and certain in these material Circumstances of his Charge against her; for that it appears, by his own shewing therein, that the supposed Crimes objected to her, and alledged to be committed, were above six Years before the Bill was offered to this Honourable House: During most of which Time, at the Advice, and by the Approbation of the Duke, was, and continued beyond the Seas, to ease him in his Charge and Part; he frequently declaring, that when he should be more easy in his Fortune, they should live together.

*M. Norfolk.*

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Upon which Answer the following Order was made. And the Duke's Second Charge delivered in the same Day.

*Die Martis, 19 Januarii, 1691.*

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That her Grace the Dutcheſs of Norfolk shall have a Copy of the Duke's Charge delivered this Day against her: And that she, or Sir Thomas Pinfold, do attend this House, to Morrow at 11 of the Clock in the Forenoon, to answer to the said Charge.

*Matth. Johnson, Cler' Parliamentor'.*

Which Copy is as followeth.

*The Charge which Henry Duke of Norfolk, Earl Marshal of England, doth exhibit against his Wife Mary Dutcheſs of Norfolk, before the Lords Spiritual and Temporal in Parliament assembled, pursuant to their Lordships Order of the 14th of January, 1691, is for the Crime of Adultery.*

THE Person charged to commit the said Crime with the said Dutcheſs, is one *John Germaine*, of the Parish of St. Margaret's Westminster.

The Times and Places when the said Crime was committed, were at *Whitehall*, in the Months of June, July, August, some, or one of them, in the Year 1685. At *Windsor*, in the Months of July, August, or September, some, or one of them, in the said Year 1685. In the Parish of St. Margaret's Westminster, March, April, May, June, some, or one of them, in the Year of our Lord 1690. And in the said Parish of St. Margaret's Westminster, in the Months of July or August, 1690. In the Parish of Lambeth, in the County of Surrey, in the Months of May, June, July, August, some, or one of them, in the Year 1691.

Norfolk, and Marshal.

*Served by Thomas Bowen, 19 Jan. before Six of the Clock.*

Upon which, the next Day, viz. the 20th of January, 1691, the Dutcheſs of Norfolk presented the following Petition.

*To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.*

*The humble Petition of Mary Dutcheſs of Norfolk.*

THAT your Petitioner was served with an Order of this Honourable House, late last Night, to attend your Lordships this Day, by Eleven of the Clock, either in Person, or by Sir Thomas Pinfold, to answer to a new Charge brought in against her, by her Husband the Duke of Norfolk.

Your Petitioner is advised, That, for her just Defence, it is necessary to alledge in her Answer several special Matters relating both to the Duke and herself.

That in this short Time appointed by your Lordships, your Petitioner finds it impossible to

D

instruct



instruct Counsel, to prepare such an Answer as she is advised is necessary to put in.

Wherefore your Petitioner humbly prays your Lordships, she may have convenient Time to put in her Answer to the said Charge.

And your Petitioner will ever pray, &c.  
*M. Norfolk.*

Upon which the following Order was made.

*Die Mercurii 20 Januarii, 1691.*

Upon reading the Petition of *Mary Dutchess of Norfolk*, praying that she may have convenient Time for answering to the Charge put in against her, by his Grace the Duke of *Norfolk*, Yesterday: It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That her Grace the Dutchess of *Norfolk* shall peremptorily answer, by herself, or Proctor, to the said Charge, to Morrow at Eleven of the Clock in the Forenoon.

*Matth. Johnson, Cler' Parliamentor'.*

Accordingly, *January* the 21st, the Dutchess of *Norfolk* delivered in the following Answer.

**I** *Mary Dutchess of Norfolk*, under Protestation, That the pretended Charge of Adultery given against me, in the Honourable House of Peers, was, and is, general, insufficient, and such as, I humbly conceive, I am not bound by Law to give Answer unto. Yet knowing my own Innocency, and that I am not guilty of the pretended Crime, this Protestation being sacred to me, I shall, and do, under the Matters and Qualifications hereafter mentioned, answer, and say, hereby affirming, That having been married to his Grace the Duke of *Norfolk*, for near 15 Years, he never did (till this pretended Charge given against me) in the least pretend, or intimate, unto me, that I had ever injured his Bed; but did always treat me with great Kindness and Respect. And about the Year 1685, at his Request and Desire, I did go with him from *London* to *France*, and there continued with him for some Time; where his Grace, being under an Indisposition, and continuing so for some Time, he shewed such Affection to me, and put so great Trust and Confidence in me, that all such Things that were administer'd to him, in Order to his Recovery, he did not, nor would receive any of them but what came from my Hands; and I did with great Care attend him: And being recovered, he told me his Occasions required him to go for *England*, but he would return to me in *France* within some short Time, and bring me home to *England*; and at his parting with me, he shewed great Affection to me, and in great Passion of Love, with Tears in his Eyes, said, he had Ten Thousand Pardons to ask me, desiring my Patience, and that I should return into *England* to him in some short Time. And after his Grace's Return into *England*, he having Notice from me, that my Lodgings was inconvenient, and desiring his Leave to change the same, he wrote me Word very affectionately, that God forbid he should constrain me to any Inconveniency, and left me to my Liberty therein. And before his parting with me, in *France*, as a Testimony of his Love and Affection to me, he ordered 400*l.* yearly to be paid unto me, out of his own Estate, by Quarterly Payments, over and above the separate Maintenance settled upon me by my Father, upon my Marriage with him. And that after his

Arrival in *England*, he made several Visits to my Mother, the Countess of *Peterborough*; and with great Observance and Respect, ask'd her Blessing, and told her, he had left me well, and safe, in *France*; and said, that his own Debts were pressing upon him; but if her Daughter (meaning myself) would consent that the Manor of *Drayton*, and other Places, should be settled upon him and his Heirs, he should thereby be made a happy Man. And I coming into *England*, his Grace having put off House-keeping, and dwelling in the Countess of *Peterborough's* Lodgings in *St. James's*, for about Two Years; and I suing him for Alimony (the said 400*l.* a Year not being paid unto me) he did not, during that Suit, object any Crime against me, which had been proper for him to have done, to avoid Alimony, if I had been guilty. And I, the said *Mary Dutchess of Norfolk*, being at *Drayton* in *Northamptonshire*, his Grace did write very affectionately to me. And that Disturbances happening in those Parts, in *November* 1688, I left *Drayton*; and, with the Consent of the Duke, went beyond Seas, and there continued 'till sent for by my Father and Mother, and then returned, which was in or about *October* 1691, with the Duke's Consent. And then Applications being made to me by the Duke my Husband, to join with him in the Sale of *Castle-Rising*, and other Estates: But I being advised this must be injurious to me, could not join therein, which I humbly apprehend to be the true Cause and Occasion of this Proceeding against my Honour, on the Duke my Husband's Part.

And I the said *Mary Dutchess of Norfolk*, adhering to my Protestation of my Innocency, and denying that I am guilty of the pretended Crime charged against me, and being unwilling to impeach my Husband of any Crime whatsoever; yet being advised, That, by the Laws of the Land, a Husband suing a Divorce for the Adultery of his Wife, he ought not to obtain any Sentence of Divorce, if he be proved guilty of the same.

Wherefore this Respondent doth aver, and is ready to prove, that the Duke her Husband was, and is guilty of Adultery, and hath continued in the Course of Adultery for these ten Years last past, and doth so continue.

*My Lords,*

It is my Misfortune to be thus accused. I had rather stand charg'd for High Treason before your Lordships, than with this ignominious Crime. In the Charge for High Treason, the Manner of Trials, and the Ways of Proceedings are known; so is the Punishment in this Case against me.

Your Lordships are now creating new Ways of Proceeding against me, and a new Law to punish me; and this for a Crime supposed, and alledged to be committed seven Years past, in another Reign, after publick Indemnities in the Sessions of Parliaments, many Sittings of Parliaments, and Dissolutions of others, without mentioning this Crime against me. My Counsel are to seek how to advise my Defence in the Proceeding, being altogether strange, and without Precedent, or Example.

I find my Prosecution now to be very violent, and my Proceeding to be very swift upon me, having had but one Night to prepare my Answer to this General Charge. I do in this Place publicly declare, I am innocent of what is objected to me, and am not guilty of defiling my Husband's



band's-Bed: I am not guilty of the Crime charg'd against me. I hope (being thus accused) I may, without Vanity and Vain-Glory, say, what is well known, That I am not only the Duke of Norfolk's Wife, but also born and descended from Parents and Ancestors of the ancient Nobility; That your Lordships Ancestors, and my Ancestors, who sat in this House, knew no such Proceeding: It is with Regret that I bring this Answer for myself, and against my Husband, but it being my Defence, I hope you will excuse me.

And if your Lordships shall, in your great Wisdom, proceed farther in this Matter, I hope, and do most heartily pray, that I may hereafter have convenient Time to make my Proofs, and full Defence; and then I doubt not of your Lordships Justice to me, as well as for my Husband, who sits and Votes with your Lordships.

M. Norfolk.

Upon the delivering the said Answer, the next Day the following Order was made.

*Die Veneris 22 Januarii, 1691.*

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That his Grace the Duke of Norfolk shall produce his Witnesses, to Morrow at Ten of the Clock in the Forenoon, to be sworn. And that her Grace the Dutcheſs of Norfolk do attend this House, by herself, or Proctor, at the same Time; and may have Orders for Witnesses if she pleases.

Matth. Johnson, Cler' Parliamentor'.

Accordingly, January 23, 1691, the Duke's Witnesses were produced; and whose Names are as followeth.

Margaret Ellwood  
Ann Burton  
Rowland Owen  
Thomas Hudson  
Simon Vareſt  
Peter Scriber  
John Reynolds  
Thomas Lloyd  
John Hall  
Mary Hall  
Richard Owen  
William Miles

Andrew Anderson  
Thomas Foster  
Margaret Foster  
Jane Wadsworth  
Mary Boyle  
Rice Jones  
Ann Jones  
John Hopkins  
William Bailly  
John Wood  
Henry Dagley  
John Colvin.

After these several Witnesses were produced, on Behalf of the Duke of Norfolk, and had given in their several Places of Abode, &c. the following Oath was administered to them.

**Y**OU shall true Answer make to all such Questions as shall be asked you by this Honourable House, in relation to the Charge of Adultery, brought in by the Duke of Norfolk, against the Dutcheſs of Norfolk, with John Germaine; you shall declare your whole Knowledge of this Matter, and shall speak the Truth, the whole Truth, and nothing but the Truth, as well upon the Matter you shall be examined on Behalf of his Grace the Duke of Norfolk, as upon such Interrogatories as shall be exhibited on Behalf of the Dutcheſs of Norfolk, without Favour or Affection to either Party.

So help you God, and by the Contents of this Book.

After the Oath administer'd, as aforesaid, the following Order was made.

*Die Sabbati 23 Januarii, 1691.*

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Dutcheſs of Norfolk's Proctor shall have a Copy of what was taken upon swearing the Duke of Norfolk's Witnesses at the Bar; and that the Duke's Witnesses shall give in their Evidence at the Bar, on Tuesday next at Ten of the Clock in the Forenoon; and that the Dutcheſs of Norfolk, by herself, Proctor and Counsel, shall attend, together with the Duke's Proctor and Counsel, at the same Time.

Matth. Johnson, Cler' Parliamentor'.

After Examination of Witnesses, on Behalf of the Duke, the following Order was made.

*Die Martis 26 Januarii, 1691.*

After hearing this Day, the Witnesses on the Behalf of his Grace the Duke of Norfolk; It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, that Friday next, at Ten of the Clock in the Forenoon, shall be, and is hereby appointed, for her Grace the Dutcheſs of Norfolk to make her Defence, by her Proctor or Counsel; and that his Grace the Duke of Norfolk's Counsel and Proctor be then present, and the Witnesses who this Day delivered their Evidence, or Oaths, on his Grace's Behalf: And that the Dutcheſs may have an Order for such Witnesses, as she shall think fit to make use of, on her Grace's Behalf.

Matth. Johnson, Cler' Parliamentor'.

Upon which Order, the Dutcheſs was advised to present the following Petition.

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble Petition of Mary Dutcheſs of Norfolk,

Sheweth,

**T**HAT since the Examination of Witnesses before your Lordships against your Petitioner, upon Tuesday last, the utmost Endeavour and Diligence hath been used, to prepare for her Defence against the Time appointed by your Lordships.

That your Petitioner is very much concerned, that, for the necessary Defence of herself, she should be forced to lie under the Charge sworn against her, one Moment beyond the Time given her by your Lordships.

But, upon a Consultation with her Counsel and Solicitor last Night, she is advised, that it is absolutely necessary for her to address to your Lordships for Time, 'till Monday next, to bring in her Defence, some of her most material Witnesses being remote from London; and though she has sent for them, and used all Means possible to get them ready by the Time appointed, she cannot be able to have them here before Monday next.

Wherefore your Petitioner humbly prays your Lordships, (it being a Case of the highest Concern and utmost Importance to your Petitioner) to give her Time, 'till Monday next, to bring in her Defence.

And your Petitioner shall ever pray, &c.

M. Norfolk.

Upon which Petition the following Order was made.



12 43. *Proceedings between the Duke of Norfolk, 3 W. & M.*

*Die Veneris, 29 Januarii, 1691.*

Whereas this Day was appointed for her Grace the Dutcheſs of *Norfolk* to make her Defence; upon reading the Petition of her Grace the Dutcheſs of *Norfolk*, praying, (it being a Caſe of the higheſt Concern, and utmoſt Importance to her) to give her Time, 'till *Monday* next, to bring in her Defence; after hearing her Counſel at the Bar, and upon Oath made that ſome of the Dutcheſs's material Witneſſes are out of Town, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That her Grace the Dutcheſs of *Norfolk* hath hereby Time given her for making her Defence, until *Monday* the Firſt Day of *February* next, at Eleven of the Clock in the Forenoon.

*Matth. Johnson, Cler' Parliamentor'.*

Accordingly the Dutcheſs of *Norfolk* began her Defence; and the following Order was made.

*Die Lune, 1 Februarii, 1691.*

It is Ordered by the Lords Spiritual and Temporal, in Parliament aſſembled, That on *Wednesday* next, at Eleven of the Clock in the Forenoon, the Houſe ſhall proceed in hearing the Dutcheſs of *Norfolk*'s Evidence; and that all the Witneſſes that have been ſworn on either Side, do then attend the Houſe.

*Matth. Johnson, Cler' Parliamentor'.*

Which they did, and the following Order was made.

*Die Mercurii, 3 Februarii, 1691.*

After having this Day heard ſeveral Witneſſes on Behalf of her Grace the Dutcheſs of *Norfolk*, as alſo for his Grace the Duke of *Norfolk*, It is Ordered by the Lords Spiritual and Temporal, in Parliament aſſembled, that her Grace the Dutcheſs of *Norfolk*'s Counſel ſhall proceed in her Grace's Defence on *Saturday* next at Twelve of the Clock.

*Matth. Johnson, Cler' Parliamentor'.*

They proceeded accordingly, and the following Order was made.

*Die Sabbati, 6 Februarii, 1691.*

After having this Day heard ſeveral Witneſſes on the Behalf of the Dutcheſs of *Norfolk*, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that the Counſel for his Grace the Duke of *Norfolk* ſhall proceed to examine Witneſſes, on *Tuesday* next at Twelve of the Clock.

*Matth. Johnson, Cler' Parliamentor'.*

Which accordingly they did, and the following Order was made.

*Die Martis, 9 Februarii, 1691.*

After hearing ſome Witneſſes this Day, on the Behalf of his Grace the Duke of *Norfolk*, It is Ordered by the Lords Spiritual and Temporal, in Parliament aſſembled, That the Counſel for his Grace the Duke of *Norfolk*, as alſo the Counſel for her Grace the Dutcheſs of *Norfolk*, ſhall be heard on *Thursday* next, at Twelve of the Clock, to ſum up the Evidence on either Side; and that Mrs. *Sawbridge*, and Mrs. *Stourton*, do then attend to be heard.

*Matth. Johnson, Cler' Parliamentor'.*

The Counſel attended accordingly, but not heard; and their Lordſhips were pleaſed to make the following Order.

*Die Jovis, 11 Februarii, 1691.*

It is Ordered by the Lords Spiritual and Temporal, in Parliament aſſembled, That the Counſel for his Grace the Duke of *Norfolk*, as alſo the Counſel for her Grace the Dutcheſs of *Norfolk*, ſhall be heard to Morrow at One of the Clock in the Afternoon, to ſum up the Evidence on either Side; and that Mrs. *Sawbridge*, and Mrs. *Stourton*, do then attend to be heard.

*Matth. Johnson, Cler' Parliamentor'.*

After Evidence ſummed up, this following Order was made:

*Die Veneris, 12 Februarii, 1691.*

After hearing this Day the Counſel, and a Civilian, for his Grace the Duke of *Norfolk*; and alſo Counſel, and a Civil Lawyer, for her Grace the Dutcheſs of *Norfolk*, who ſummed up the Evidence for their Graces ſeverally, It is Ordered by the Lords Spiritual and Temporal, in Parliament aſſembled, That on *Tuesday* next, at Twelve of the Clock, this Houſe ſhall proceed in the Debate of this Buſineſs; and that then no other Buſineſs whatſoever ſhall intervene: And that all the Lords in and about the Town ſhall be ſummoned then to attend; and that the Officers that ſummon them, give the Houſe an Account of what Lords they ſummon.

*Matth. Johnson, Cler' Parliamentor'.*

The Matter was accordingly enter'd upon; and, after ſome previous Debates by their Lordſhips, they were pleaſed to adjourn 'till the next Day, when they proceeded, viz.

*Die Mercurii, 17 Februarii, 1691.*

The Depoſitions taken at ſeveral Times before, on the Behalf of his Grace the Duke of *Norfolk*, as alſo thoſe taken on the Behalf of her Grace the Dutcheſs of *Norfolk*, were read at the Table, by the Clerk, and are as followeth, viz.

*The PROCEEDINGS of the LORDS upon the Evidence.*

*Rowland Owen examin'd on the Behalf of the Duke of Norfolk, againſt the Dutcheſs of Norfolk.*

**R**owland Owen ſaith, That Mr. *Reyner*, about Six Years ſince, being the Duke of *Norfolk*'s Butler, order'd him to carry the Things out; the Lodgings being open, he ſaw Mr. *Germaine* in Bed with the Dutcheſs of *Norfolk*, the Dutcheſs leap'd out of the Bed, and put on a Morning Gown, and *Germaine* hid himſelf in Bed; this was between Five and Six o'Clock in the Evening, about a Fortnight before *Bartolomew* Day; he did not tell the Duke: He is ſure it was *Germaine*; he ſaw him often, twice or thrice a Day; the outward Door of the Lodgings was ſhut, but he open'd it with a Key he had.

*Rowland Owen* examined a ſecond Time, ſaith, he never had the Key of the Lodgings but once, that Mr. *Reyner* gave him the Key, when he went (as he told him) to the Blue Poſts in the *Hay-Market*, to beſpeak the Dutcheſs's Supper; he ſaith he ſaw not *Frances Knight* then in the Lodgings, nor any other Woman but the Dutcheſs of *Norfolk*;

Norfolk; he ſaith he hath ſeen *Reyner* often open the outward Door of the Lodgings, when he hath been by, without calling *Frances Knight*: He ſaith that he himſelf opened the firſt Door with the Key, the ſecond Door was not cloſe ſhut, and the third Door was open: He ſaith, two of the Doors are ſtraight forward, and the third turns a little on the right hand; he ſaith he was gone in at the third Door when the Dutcheſs leap'd out of Bed.

*Witnesses produced to the Credit of Rowland Owen.*

**E**dward *Silveſter* ſaith, He hath known *Rowland Owen* three or four Years, and he hath truſted him in Buſineſs, and he hath ever been very faithful; he hath truſted him in Stores to the King, and he might have embezzled, but ever found him honeſt; and he hath had three or four Thouſand Pounds worth of Goods that he might have embezzled, and hath had Opportunities of doing ill Things, but he never did: He hath truſted him with every Thing he hath; he hath had more than 20*l.* embezzled by others, but he never embezzled a Halfpenny: He knows not well who recommended him to him; he hath an hundred Men now, and he knows not that three of them were recommended: He hath truſted him with Goods an hundred and an hundred Times, that he might have embezzled; and others that he hath ſo truſted have cozen'd him, and he hath loſt 20*l.* in a Month's Time by them; he works at our Work, and that better than Twenty that he hath had, and he is no Porter: He ſaith he knows not Mr. *Negus*, nor was not acquainted with him 'till Yeſterday.

*John Jones* ſaith, he hath known *Rowland Owen* above three Years, and that he is a very honeſt Man, and that he ever found him faithful; that he lodged in his Houſe, and that he might have done him Injuries if he would, and he hath been employ'd elſewhere, and he never heard any

Ill of him; he believes he is a Man of a better Principle than to take a falſe Oath.

*Thomas Cooke* ſaith, That he hath known *Rowland Owen* five Years, and knows not but that he is an honeſt Man, and ſaith that he maintains his Family by his Labour; he is his Neighbour, and never heard him taxed with any Miſdemeanor.

*Witnesses ſworn on Behalf of the Dutcheſs, for invalidating the Teſtimony of Rowland Owen, v:z.*

**F**rances *Knight* ſaith, She knows *Rowland Owen*, as he was a Fellow-Servant in the Duke of Norfolk's Houſe; ſhe hath known him a Year, he was running Porter, to carry up Coals and Wood; he was not truſted with any Keys; ſhe was truſted with the Keys to the Lodgings, and ſhe always kept the Key to the outward Door to the Lodgings, and there was no other Key; and ſhe never deliver'd it to any Body, but ſometimes left it with the Lady *Peterborough's* Houſe-keeper; ſhe never let this *Owen* have that Key, or any other Key to the Lodgings, it was below her to do it; he never went into the Inner Rooms, no farther than the Steps to the outward Room; he is a pitiful beggarly Fellow; he laid the Steward's Cloth, and had no other Livelihood; ſhe lived with my Lady ſix Years and upwards, and all the while had the Key to the outward Door: She ſaith you muſt firſt come into the Room called the Footmens Waiting-Room, then into the Dining-Room, then into the Bed-Chamber; the Doors are ſideways: She made the Dutcheſs's Bed conſtantly; ſhe lock'd the Door, and kept the Key in her Pocket; ſhe had the Key of the Rooms 'till the Counteſs of *Weſtmoreland* had the Lodgings, which was not 'till the Duke and Dutcheſs left them, which was ten or twelve Days before *Bartholomew-tide*, ſix Years ago.

*Henry Reyner* ſaith, That he knew *Rowland Owen*, Street-Porter; he ſaith that he (this *Witness*) could never get into the Lodgings, but

*The following Observations were published with the above Proceedings, in 1692; by her Grace's Friends.*

*Observations upon the foregoing Evidence.*

**W**E are in the firſt Place to conſider, and compare the Evidence on both Sides. Secondly, To examine the Credit of the *Witnesses*. Thirdly, The reaſonable Probability of the Matters Sworn, according to the common Courſe and Practice of the World.

*Owen* ſwears, That being ſent by *Henry Reyner*, the Duke's Butler, to carry the Things out, and the Lodgings being open, he ſaw Mr. *Germaine* and the Dutcheſs in Bed; and to countenance the Story, he ſays, That two of the Doors are ſtraight forward, giving to underſtand that the Doors being open, and one againſt another, a Body may ſee the Bed out of the firſt Room into the third; that *Reyner* gave him the Key of the outward Door, and upon the unlocking of it, he made this Diſcovery.

*Frances Knight* encounters this Evidence with a Depoſition, that ſhe kept the Key of the outward Door herſelf, and delivered it to no Body, but now and then to my Lady *Peterborough's* Houſe-keeper; That *Owen* never went into any of the inner Rooms, and that the Doors are ſideways.

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*Henry Reyner* ſaith alſo, That he himſelf could not get into the Lodgings, but by *Frances Knight*; that he never gave *Owen* the Key, nor ever had it in his Poſſeſſion; that he never ſaw *Owen* beyond the Paſſage-Room, nay, that *Frances Knight* never gave him the Key, but that he ſtill went to her to open the Door, and that he never had any Key to the Lodgings; that whenever he ſent *Owen* with Plates, Spoons, and the like, from the Duke's Houſe to the Lodgings in *Whitehall*, he was either there himſelf to receive them, or directed *Owen* to deliver them to *Frances Knight*.

Now, if theſe two *Witnesses* ſpeak Truth, *Owen* was never in the inner Rooms at all; he never had the Key of the outward Door, and the Doors are not ſtraight forward as *Owen* ſwears they are, which is a Matter of Fact eaſily cleared.

As to the Credit of *Rowland Owen*, *Edward Silveſter*, *John Jones*, and *Edward Cooke* are produced in his Favour. The firſt ſwears, he never knew him ſteal or cozen, as if the Caſe were Pilfery. The ſecond, That *Owen* might have done him Wrong, and did not, and thence infers that he would not take a falſe Oath. The third, that he knows nothing to the contrary of his being an honeſt Man. So that here are three Surmiſes for the Reputation of *Owen*, which are juſt nothing to the Purpoſe, on the one Hand;

E

and



when he had the Key from *Frances Knight*; he saith *Owen* never came into the Lodgings, but had a Key to a House where the empty Bottles were, which was without the Lodgings; and he himself could not get into the Lodgings but by *Frances Knight*; he never had the Key in his own Possession; he never saw *Owen* farther than the Passage-Room; he saith that the Doors are not opposite to one another; he saith *Frances Knight* never gave him the Key; he always found her there to open the Doors, or in the Room; he never had any Key that would open the Lodgings; *Owen* never told him that he caught the Dutchess in the Manner as is said; he knows not of any Livelihood he had, besides laying the Steward's Cloth: *Owen* had Wages from the Duke, and lodged at the Duke's House in St. James's; he sent Bottles, Pewter Plates, Forks and Spoons, Bread, and Linnen sometimes by him, from the Duke's House to the Lodgings in Whitehall: When he was not there to receive them himself, he gave him Directions to deliver them to *Frances Knight*, or gave him the Key of the Cupboard. Being ask'd whether he hath ever gone by another Name than *Reyner*, he desired to be excused, and refused to answer; he refused

also to answer whether he had known any Lady go by the Name of *Bateman*: Afterwards he said, He did know one to do so. He saith, she went by the Name of the Dutchess of *Norfolk*: He saith, it was the Dutchess of *Norfolk* that went by the Name of *Bateman*, and she went so he believes for a Year; it was at *Lambeth*, but he knows not at whose House there; he never saw *Germaine* there; it was a Year, or Half a Year since, he knows not certainly; the House is called by the Name of *Scriber's* House, a Dyer; he never saw Mr. *Germaine* at *Scriber's* with the Lady *Bateman*; he saith, he himself went by the Name of *Goodman*, when he lived with this Lady *Bateman*; he saith, that he knows not that *Germaine* was ever at *Lambeth*, by that Name, or any other: He saith, he never paid any Rent for the House at *Lambeth*, nor knows that *Germaine* paid any for it; but he saith, he was a Servant to the Dutchess at *Lambeth*, but knows not what Office he was in, but she paid him his Wages.

*Henry Reyner*, examined to what *Rowland Owen* said at his second Examination, saith, He never gave him the Key of the Lodgings, and saith, he never had the Key of the Lodgings.

Margaret

and two point blank Proofs, upon Oath, against him on the other; and not one Syllable all this while to disparage the Testimony of either *Knight* or *Reyner*; though there are several pinching Passages in the Evidence, that, if they were false, might be detected by Hundreds of Witnesses. And for an Instance of *Reyner's* Tenderness of an Oath, he has own'd some Things, upon the Close of his Examination, to the seeming Prejudice of the Dutchess herself. This is meant of their going by borrowed Names; but as things stood at that time with many Persons of Honour, under her Grace's Circumstances, it was no Scandal to conceal either their Names or their Abodes. But as to the true Reason of the Dutchess's Retirement, and living in a Manner so *Incognito*: The Earl of *Peterborough* falling desperately sick in the Tower, her Grace came over upon it, from beyond the Seas, to be within Distance, in Case the Sickness should have proved Mortal. The Dutchess had at that Time nothing to live upon but an Exhibition from her Father, and one Half of that was made over too for the Payment of her Debts; so that not being in Condition to appear answerable to her Quality, she thought herself bound in Honour, Prudence and Justice, to retrench her Expences, which she could not better do, than by such a Retreat.

It is in the next Place to be observed, how *Owen* interferes with himself; the Lodgings, he says, being open, he saw Mr. *Germaine* in Bed with the Dutchess of *Norfolk*, the Dutchess leap'd out of the Bed, &c. This must naturally be understood to have been upon the opening of the first Door; and to the end it should be taken so, he says, that the two first Doors were straight forward, and that the third turns a little. Now if so, How could he see the Bed out of the first Room into the third? And then he forgets himself again, in saying that the second Door was not close shut, and the third open; so that he has now doubled the Difficulty: There was no seeing into the Bed-Chamber, both because the second Door was almost close, and because the third was sideways. It is to be noted

also, that the Bed stands quite out of Sight of the Bed-Chamber Door, which is sufficient of itself alone to overthrow *Owen's* Testimony. But upon second Thoughts, he takes himself tripping, and instead of mending the Matter, makes it worse; it comes into his Head by this time, that there was no seeing them in Bed out of the first Room, and so thinks to help it out with a Flam at the wrong End of his Information, that indeed he was in at the third Door when the Dutchess leap'd out of her Bed. Now, to take the Tale his own way, can any Body imagine, that *Owen* should unlock the outward Door, lay down his Lumber, pass these two Rooms into the third, the Dutchess and Mr. *Germaine* both awake too, and all this Noise not give them the Alarm?

To come now to the Probability of the Thing, *Reyner* gave him the Key, he says, only for once it seems, for he never had it either before or since. Has not this the Face now of a Contrivance, calculated for a particular Turn? Is it not highly improbable again, that a pitiful, drudging Fellow, that earn'd his Bread by doing Porter's Work for the Family, should have the Dutchess's Bed-Chamber laid open to him? And so for the Morning-Gown, and *Germaine's* hiding himself in the Bed, had they no other Cloaths or Garments lying by them? That *Owen* should have the Luck to see just this, and nothing else. But his Lesson was to swear *Nudus cum Nudâ*, and *Solus cum Solâ*, to bring the Proof up to the Straitness of the Law, and that was the Part he had to play. Or, to take the Case yet another way: If *Owen* had seen them out of the first Room, can any Body think he would have ventur'd after that into the Bed-Chamber? Or, if he did not see them in the first Room, what had he to do in the other Room at all? But over and above all the rest, for an Amour of this Quality, to be carried on thus in the Face of the Sun, the Doors and the Curtains open; let any Man ask his own Conscience, if he does not look upon it as an Imposture, without a Precedent from the Creation, to this Day.

Margaret Ellwood examined on the Behalf of the Duke of Norfolk, againſt the Dutcheſs.

**M**argaret Ellwood ſaith, She had a Company to ſee the Lodgings at *Windsor*, in the firſt Year of King *James's* Reign, about three or four of the Clock in the Afternoon; a Woman told her that my Lady was not there, but ſhe opening the Door, ſaw my Lady upon the Stools in an ill Poſture, Mr. *Germaine's* Breeches were down; he pull'd them up, and laid his Hand on his Sword, ſaying, *God damn you for a Whore, How have you the Impudence to come here?* My Lady bid him kick me down; he ſcattered ſome Concerns, that is, Man's Nature on the Boards; ſhe ſaw no Nakedneſs but her Knee, or a little above. Another time after, ſhe found *Germaine's* Handkerchief and Ruffles in my Lady's Bed; my Lady's Woman ſaid there was *Germaine's* Name upon them. Another time, ſhe ſaw Mr. *Cornwal* let Mr. *Germaine* out of my Lady's Cloſet: She ſaw *Germaine's* Legs within hers when ſhe came the firſt time into the Room, and his Breeches were about his Heels. The firſt time was in *Bartholomew-Fair* time; Mrs. *Knifeton* told her it was *Germaine's* Linnen.

Witnesses produced to the Credit of Margaret Ellwood.

**C**aptain *Charles Potts* ſaith, He hath known *Margaret Ellwood* ſix or ſeven Years, and that ſhe was Servant to the Duke of *Norfolk*, and that ſhe behaved herſelf well and prudently there; her Huſband was a Soldier in his Company, and was, as he hath heard, a Shoemaker.

*John Faucet* ſaith, he knew *Margaret Ellwood*, while ſhe was the Duke of *Norfolk's* Servant, about two or three Years; he never heard any Scandal, or Diſgrace of the Woman, but that ſhe carried herſelf civilly; he knows not whether ſhe kept an Ale-houſe in *Windsor*.

*Lawrence Purcell* ſaith, He knows *Margaret Ellwood*, ſhe lived in his Houſe in *Brooks-Market*, next *Eaſter* will be two Years: He knows nothing amiſs of her; ſhe took Care for her Living; he never knew her keep ill Hours; ſhe took a Room in his Houſe, ſome of the Rent is behind, he thinks thirty two Shillings, her Huſband and the Woman gave him a Bond for it.

• *Observations upon the foregoing Evidence.*

Here's a foul and a ſuſpicious Story in this Depoſition of *Margaret Ellwood*, wherein ſhe ſtands ſingly upon the Credit of her own Teſtimony, without any Colour, or corroborating Evidence to ſupport it: Only Capt. *Charles Potts*, *John Faucet*, and *Lawrence Parnell*, are produced to ſpeak to her Perſonal Reputation. The firſt ſays, ſhe behaved herſelf well and prudently in the Duke's Houſe; the ſecond and third, that they knew no ill by her.

There were produced on the Behalf of the Dutcheſs, and to invalidate the Teſtimony of *Margaret Ellwood*, theſe ſix Witneſſes, *Michael Haddon*, *Joyce Heath*, *Mary Trevis*, *Mary Jones*, *Anne Roſs*, and *Mary Roſs*. *Mary Trevis*, *Mary Jones*, and *Anne Roſs*, do all depole, that about

Witneſſes ſworn on the Behalf of the Dutcheſs, for invalidating the Teſtimony of *Margaret Ellwood*.

**M**ichael Haddon ſaith, He hath been acquainted with *Margaret Ellwood*, four, five, ſix, or ſeven Years: When he firſt knew her, her Huſband was a Soldier in the Duke's Company, and ſhe was, as he hath heard, an under Houſe-keeper; he believes ſhe was turned out of the Duke's Service; afterwards ſhe ſold Drink in a Houſe of his at *Windsor*, and went away in his Debt by Night, without paying him; ſhe took her Goods with her; this was in 1689.

*Joyce Heath* ſaith, She knows *Margaret Ellwood*; ſhe lived in a Cellar of hers, and in a Back-Houſe of hers, but not at the ſame Time, three Quarters of a Year, in *Brooks-Market*, about *Michaelmas* laſt; ſhe paid the Landlady but eleven Shillings and ſix Pence: Her Courſe of Life was not good; ſhe was in an inferiour Condition, her Huſband was a Cobler in a Stall, and ſhe had five Children.

*Mary Trevis* ſaith, She hath but a ſlender Acquaintance with *Margaret Ellwood*; but the ſaid *Ellwood* ſent to borrow a Scarf of her the *Sunday* after *Chriſtmas* laſt; and ſaith, That going the next Day for her Scarf, ſhe, the ſaid *Ellwood*, deſired it for a longer Time, for it might be five Pounds in her way, for ſhe was to be a Witneſs for the Duke of *Norfolk*, who was to be divorced from his Dutcheſs, and that the Duke ſent his Chariot for her: I told her there could be no Separation in Marriage, except Adultery could be proved; and that I could not think it reaſonable to believe, that ſo mean a Servant as ſhe could be a Spectator to ſo ill an Action as that was. She ſaid, ſhe thought ſhe could do the Duke no Kindneſs in going, for ſhe never ſaw any other Harm by the Dutcheſs, than that ſhe ſaw Gentlemen come to and fro to the Houſe; but the Duke had ſent for her, and ſhe muſt go.

*Mary Jones* ſaith, She knows *Margaret Ellwood*, who ſhe heard ſay, the Lady Dutcheſs ſent for her a little before *Chriſtmas* laſt, and ſaid, *Margaret*, I deſire you to ſpeak the Truth, I would not have you diſoblige my Lord in the leaſt. *Margaret Ellwood* ſaid, She never knew no Harm by her Grace. The Dutcheſs demanded the Keys of her, and ſhe gave them her; and the Dutcheſs gave them to her the ſaid *Ellwood*, again the next Morning: The Diſcourſe was a few Days before *Chriſtmas* laſt.

*Chriſtmas* laſt, ſpeaking of the Dutcheſs, and Mr. *Germaine*, *Margaret Ellwood* told each of theſe Witneſſes reſpectively, that ſhe never ſaw or knew any thing of Ill by the ſaid Dutcheſs; and yet *Ellwood's* Accuſation bears Date in the firſt Year of King *James*. *Mary Trevis* ſwears farther, that upon the next *Sunday* after *Chriſtmas* laſt, *Ellwood* told her, upon borrowing a Scarf of her, that it might be five Pounds in her way, for the Duke was to be divorced from the Dutcheſs, and he had ſent his Chariot for her, and ſhe was to be a Witneſs. *Anne Roſs* ſpeaks alſo to the ſame Effect, how *Ellwood* told her there would be a Divorce, and the Duke had ſent for her to be a Witneſs; and likewise ſaith, That *Ellwood's* Huſband told her, that his Wife was to have thirty Pounds per Annum ſettled upon her, and live at *Windsor*, and have the ſhewing of the Caſtle.

*Mary*



*Anne Rofs* saith, She knows *Margaret Ellwood*, who came to her House, and told her, about two Months since, that the Duke of *Norfolk* sent for her to Witness, for there would be a Divorce between the Duke and Dutchess; and I asking her what she could say, She answered she could say little, but that she knew no ill by the Dutchess; but that she was a good generous spirited Lady, and she never knew any ill Action by her in her Life; I bid her have a Care what she went about, for that would do the Duke but little Kindness. The Dutchess, she said, called for the Keys of her Lodgings, but gave her them back the next Morning. She saith, That last Week she went to her to demand a Debt, and she promised to come and pay it her. She saith, she went to the Porter at the Duke's to ask for her; but the Porter said she was not within; but meeting with her Child there, she said she was within, and brought her, the Witness, to her in the Duke's House, and she made her very welcome, and sent her Husband with her, the Witness, to see her Childrens Lodging in the *Green Mews*, near the Duke's House: She saith, *Ellwood's* Husband told her, upon asking how the Cause went, that

his Wife was to have 30*l.* *per Annum* settled on her, and to go to *Windsor* to live, and to have the shewing the Castle: She saith, that upon her going to see the Children, and commending their Lodgings, that *Ellwood's* Maid, or Woman, told her they paid four Shillings a Week for the Lodgings: She saith, the Children were well cloathed, with good Frocks and Top-knots, and they used to be ragged, and that her Husband used to allow her but six Pence a Day for her and her Children: She saith, that *Margaret Ellwood* told her she had been with the Dutchess, and that her Grace bid her do nothing to disoblige her Lord, but speak the Truth.

*Mary Rofs* saith, She knows *Margaret Ellwood*; She saith, she heard *Ellwood's* Husband say, that the Duke of *Norfolk* had taken Care of his Wife and Children, and settled thirty Pounds *per Annum* on them, and her Habitation was to be at *Windsor Castle*; and said, that my Lord Duke would be divorced, for he was to have a great Fortune of Twenty Thousand Pounds a Year: This Discourse was the last Week, and her Father was present, and her Mother was just gone out.

Thomas

*Mary Rofs* speaks to the same Purpose also, with the Witness above, as to what *Ellwood's* Husband said of *Windsor*, the Settlement, and the Divorce; adding also, that the Duke was to have a great Fortune, (according to the common Rumour then about the Town;) *Mary Rofs's* Father was by, and heard all this: It was about a Week before the Date of the Information that Discourse had passed.

Nay, the Dutchess was so clear in the Matter, that she sent for *Ellwood* a little before *Christmas* last, and bid her speak the Truth; as *Ellwood* herself own'd to *Mary Jones* and *Anne Rofs*.

To come now to the Quality and Credit of *Margaret Ellwood*. *Haddon* says she was his Tenant at an Ale-house in *Windsor* in 1689, carried off her Goods by Night, and went away in his Debt.

*Heatb* saith, She liv'd in a Cellar, led an ill Course of Life; her Husband was a Cocker in a Stall.

*Anne Rofs* says, That she had five Children, and that she had but six Pence a Day Maintenance for herself and them.

This was her Condition till near *Christmas* last, when all on a sudden, as *Anne Rofs* deposes, she was taken into the Duke's House, the Children new cloath'd, and trick'd up with good Frocks, and Top-Knots, (which were till then all in Rags,) Lodgings provided for them at four Shillings a Week, and a Maid to look to them, and no visible Means of doing all this. But, in fine, the Change was not wrought by Miracle, and leans much toward the Discourse before-mentioned, that *Anne* and *Mary Rofs* had with *Ellwood's* Husband.

The Question, at last, is briefly this: Whether is to be believ'd, a Woman under so many scandalous Circumstances, and one that swears for herself too; or six Witnesses against her of so unquestionable Probity, that not so much as one of them could be impeach'd by the other Party?

To pass now to the palpable unlikelihood of

the Story barely in itself; *Ellwood* was carrying Company, she says, to see the Lodgings at *Windsor*, and opening the Door, she saw and heard, as in her Deposition. How came it now, that none of this Company should be produc'd, or so much as nam'd to second *Ellwood*? for 'tis to be presum'd, they must needs hear and see what pass'd upon this Adventure, as much as she herself did; or if she had but nam'd the Woman, who, she says, told her my Lady was not there, it might have serv'd as a Collateral Inducement, for the giving of some Sort of Credit to it. But in a Matter of this Importance, to have so many Witnesses within Reach of being found out, and none to appear, looks very ill on their Part, that were so much concern'd to produce them: And so for *Germaine's* threatening her, and the Dutchess's bidding him kick her down, no People in their right Wits, but would have try'd to stop her Mouth, with fair Words and a good Bribe in such a Case as this, rather than provoke her by Menaces and ill Language, to run open Mouth to the Duke with the Story, in Revenge, when she had the Dutchess's Honour and Estate so absolutely at her Mercy.

As to the Business of Mr. *Germaine's* Handkerchief and Ruffles, and his being let out of the Closet, the Contrivance is all of the same Piece with the rest; for why were not the Persons nam'd in her Deposition, produc'd to prove the Particulars therein mention'd, as well as *Ellwood*? It is most certain, that the Prosecutors could easily have done it, and that it was properly their Business and Interest so to do; for what signifies *Ellwood's* single Testimony, under her Circumstances, without corroborating Proofs? She tells us a Tale, of Company to see the Lodgings, a Woman that told her so and so; and another Woman and a Gentleman that said, and did this and that, and yet not one Creature at last to second her Deposition, nor any Pretence of an Exception to the Evidence on the other Side.

Thomas Hudſon examined on the Behalf of the Duke of Norfolk, againſt the Dutcheſs. \*

**T**homas Hudſon ſaith, That the Duke of Norfolk being at *Portſmouth*, he was Butler at *Windſor*, when *Germaine*, and the Dutcheſs, and *Cornwall* went to play; *Germaine* ſent his Footman for clean Linnen, which he brought the next Morning. Mrs. *Gwin* ſaid to the Dutcheſs, The Dog would have lain with me, but ſhe would not lay the Dog where the Deer laid, for ſhe knew my Lady Dutcheſs would accept of him; after that, he ſaw a Shirt and a Waitcoat in the Cloſet, which my Lady's Woman and *Anne Burton* took away. My Lord being abſent, we murmured amongſt our ſelves, that my Lord was wrong'd: I told my Lord; whereupon my Maſter *Cragg* had me to my Lord *Peterborough's* Lodging, and threaten'd me, that he would prefer me to his Brother *Richards*, who turn'd me off in *Germany*. This was, he thinks, in *December*, or *September*, 1685. Mrs. *Gwin* ſpoke this in the *Green Room*, and he was in a Cloſet hard by, and the Door open, and ſo heard it.

Witnesses ſworn on the Behalf of the Dutcheſs, for invalidating the Teſtimony of Thomas Hudſon.

**W**illiam *Purchaſe* ſaith, That he knows *Thomas Hudſon*, who, he ſays, was never Butler to the Duke of Norfolk, either at *Windſor*, or any other Place: He, the Witneſs, was Under-Butler himſelf, *Reyner* was Butler in 1685, and the Witneſs was Under-Butler. He ſaith, *Hudſon* waited on the Gentleman of the Horſe and the Steward; he was not the Duke's Servant, nor waited at the Table that he knows of; he was never ſuffer'd to come into the Room when the Duke or Dutcheſs was at Play. He ſaith, he, the Witneſs, was not at *Windſor* at the Time when the Duke of Norfolk was at *Portſmouth*, but he was ſent to *Drayton* in *Northamptonſhire*, and was then the Duke's Servant as Under-Butler;

\* *Observations upon the foregoing Evidence.*

**H**udſon ſwears himſelf the Duke's Butler at *Windſor*. *William Purchaſe* ſwears that *Hudſon* was never the Duke's Butler.

*Hudſon* ſays, that they went to Play, and that he over-heard Mrs. *Gwin* out of a Cloſet, ſaying as in the Evidence. Mrs. *Gwin* is a dead Witneſs, and *Hudſon* but a Cloſet Witneſs, which is little better; now *Purchaſe* ſays again, that *Hudſon* was never ſuffered to come into the Room where the Duke or Dutcheſs were at Play.

*Hudſon* ſays likewiſe, that the Servants murmur'd amongſt themſelves, that my Lord was wrong'd, and that he told my Lord of it. Colonel *Jacob Richards* depoſes, that he himſelf telling *Hudſon* of a Talk, that he had betray'd the Dutcheſs, and ſpeaking of a Noiſe of the Adultery; *Hudſon* made Answer, That it was a falſe Accuſation, and he knew nothing of it.

Now, as to *Hudſon's* Credit, he was Colonel *Richards's* Footman, who turn'd him off as a tricking Fellow, and not fit to be truſted. Mr. *Negus*, the Duke's Servant, both then and now, was of the ſame Opinion too, and adviſed by Letter the putting of him away, as a dangerous Fellow.

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he knows not that *Reyner* was; he ſaith, he is now Servant to the Lord *Peterborough*.

Col. *Jacob Richards* ſaith, That he knows *Thomas Hudſon*, he was his Servant, he was recommended to him by Mr. *Cragg*, he was his Footman; he believes he was in his Service four Months, he parted with him, becauſe he found him a tricking Fellow; he told him his Brother *Cragg* was to be kill'd by one *Curry*, and another *Iriſhman*: He, the Witneſs, writ to his Brother *Cragg*, and he advis'd the Witneſs to part with him, for he did not think him fit to be truſted in his Travels; whereupon he paid him his Wages, and gave him Money to bear his Charges to *England*, and ſent a Trunk by him. One Mr. *Negus* travell'd with the Witneſs; and his Father, who then and now lives with the Duke of Norfolk, writ to us, that he did not think it fit for us to keep ſuch a Servant, for he was a dangerous Fellow, or to that Effect. *Hudſon* never own'd any thing of the Adultery to the Witneſs, but poſitively declar'd to him he knew nothing of it: This was in *January*, 1685. He ſaith, that *Cragg* writ him word, that *Hudſon* muſt needs be a tricking Knave. He negligently told the Witneſs this of the Adultery; Curioſity made him aſk it of him, for he had liv'd with the Duke and Dutcheſs, and it was natural for him, the Witneſs, to aſk ſuch a Queſtion. He ſaith, he believes *Hudſon* ſaw ſome of his Letters: He ſaith, there were printed Papers in the Trunk he ſent, but nothing of any conſiderable Value: He ſaith, *Hudſon* never cheated him of any thing that he knows of; he hath truſted him with a 100*l.* at a time: The Trunk was deliver'd in *England*, and he believes he knew what was in it: He ſaith, that aſking *Hudſon* whether he knew any thing of the Adultery charg'd on the Dutcheſs of Norfolk? *Hudſon* ſaid, he knew nothing of it: He, the Witneſs, told him, that it was ſaid, that it was he that had betray'd the Dutcheſs; he ſaid it was a falſe Accuſation, for he knew nothing of it.

The Story of Mr. *Germaine's* ſending his Man for clean Linnen over Night, and the bringing it next Morning, has little in it, even ſuppoſing the Fact to be true. *Fiſt*, The Order was given bare-fac'd, and conſequently no Myſtery in it. *Secondly*, There was a Set-Company at Play, and that was not an Opportunity for a Love Intrigue. *Thirdly*, It is no new Thing for People to ſit up all Night at Play, and change their Linnen next Morning, without any Offence to Honesty, or good Manners, where they may have a Privacy ſo to do it. And if my Lady's Woman and *Anne Burton* took away the Shirt and Waitcoat, as he ſays they did, there's no great Hurt in that neither; though it's much to have three ſuch Confidants to ſuch a Secret, an under Footman privy to the Intrigue of *Germaine's* Man going and coming, and raking in the Women's Cloſet among the Linnen.

But ſtill the only proper Witneſſes are kept behind the Curtain: *Anne Burton* indeed is produced, and we ſhall ſee what kind of Evidence ſhe proves herſelf in the next Place.

Anne



*Anne Burton examined on the Behalf of the Duke of Norfolk, against the Dutcheſs. \**

**A**NNE Burton ſaith, She was Servant to the Duke and Dutcheſs of *Norfolk*: When the Duke was gone to *Portsmouth*, ſhe was at *Windsor*, when my Lady went to *London* with *Germaine*. When my Lady came Home, after Supper ſhe was in great Haſte to go to Bed; when ſhe was undreſt, ſhe ſaid ſhe would lock us out, becauſe ſhe would not be diſturb'd before Eleven o'Clock the next Morning, tho' the King and Queen ſhould come. *Hudſon* told her *Germaine* was ſtill in the Houſe, whereupon we laid Chairs on the back Stairs, that we might hear him if he came down; the Chairs were not removed the next Morning; when *Germaine's* Man came with Linnen, he ſaid his Maſter was there. My Lady ordered a Fire to be made in my Lord's Room, where, when ſhe was come, Mrs. *Nelly Gwin* came in, and aſked her how ſhe liked her Night's Reſt? And being aſked for *Germaine*, ſhe ſaid ſhe knew nothing of him. My Lady complaining of her Hair being out of Order, *Nelly* answered, it was a hot Night with her, enough to put her Hair out of Powder and Curl too. Quickly after, *Cornwall* came in and aſked for *Germaine*, and my Lady ſaying ſhe knew nothing of him, *Nelly Gwin* ſaid, I queſtion not but he will come out by and by like a drown'd Rat; with that, while I was cleaning the Dining-Room, Mrs. *Knifeton* called me, and ſhewed me in a Cloſet, *Germaine's* Shirt and Waſtcoat, and afterwards making my Lady's Bed, ſaw there were two Prints where Two had laid. The Shirt and Waſtcoat were ſent by the Duke to the Lord *Peterborough's*: She ſaith ſhe is a ſingle Woman, and was never married; this was about *Bartolomew-Tide*, ſix Years ſince: She ſuppoſeth the Bed was ſtained both by a Man and Woman.

*Witneſſes ſworn on the Behalf of the Dutcheſs, for invalidating the Teſtimony of Anne Burton.*

**A**NNE Burton againſt herſelf: Upon ſeeing ſeveral Witneſſes come in, to prove her to be a married Woman, (tho' ſhe had ſworn the contrary,) was call'd to the Bar of the Lords, and there ſaith, She was not married when ſhe was at *Windsor*; ſince that ſhe hath been married. *Anne Burton* was her Maiden Name; her Huſband's Name is *Benſkin*.

*Suſan Wheatcroft* ſaith, That ſhe knows *Anne Burton*, and that ſhe lodged in her Houſe ſixteen Weeks, with her Huſband *Robert Benſkin*;

*\* Observations upon the foregoing Evidence.*

**A**NNE Burton has the Story over again of the Shirt and Waſtcoat, and of Mrs. *Gwin's* Diſcourſe, to which enough is ſaid already, and more needs not be ſaid upon the Evidence of a Perſon ſo manifeſtly forſworn. In her firſt Oath, ſhe ſwears herſelf a ſingle Woman, and that ſhe was never married; but upon Witneſſes appearing to prove the contrary, ſhe was called to the Bar again, and own'd herſelf to be married, and that her Huſband's Name was *Benſkin*.

This *Anne Burton* had been a Lodger ſixteen Weeks to *Suſan Wheatcroft*, as appears by *Wheatcroft's* Depoſition; ſhe conveyed her Goods privately out of the Houſe by Parcels, and ſlipped away ſeven Pounds fifteen Shillings in her Debt; ſhe told *Wheatcroft* that ſhe was to be a Witneſs againſt the Dutcheſs, and that ſhe ſhould have Money; her Huſband ſaying alſo, that his Wife was to be a material Witneſs againſt the Dutcheſs,

and ſhe ſaid, ſhe ſhould have a Parcel of Money to be a Witneſs for the Duke of *Norfolk*, againſt his Dutcheſs; this was about March two Years ſince. Her Huſband ſaid, he ſhould have a Commiſſion from the Duke of *Norfolk*, and he ſhould have a great deal more from him, for his Wife is to be a material Witneſs againſt his Dutcheſs. They did not pay her, the Witneſs, when they went away, nor ſince; they owed her ſeven Pounds fifteen Shillings; ſhe hath been ſeeking after them, and could not find them; ſhe left a Trunk with Rags in it, and went away privately, carrying away her Goods by Parcels.

*Mary Sheriff* ſaith, That ſhe lives next Door to *Warwick-Houſe* in *Holbourn*, and hath kept Houſe there near ſeven Years, and hath known *Anne Burton* two Years; ſhe lived with my Lord *Clare*: While ſhe was there, a Soldier courted her, they uſed to come every Day for a Fortnight or three Weeks to her Houſe to drink; ſhe ow'd her about three Pounds: She hath told her ſeveral times ſince, that ſhe was to be a Witneſs for the Duke of *Norfolk* againſt his Dutcheſs, and ſhe was to have Money for ſpeaking: She heard Mrs. *Tod* bid her always keep in a Story, and ſhe would do well: She, the Witneſs, heard them talk of thirty or forty Pounds *Mrs. Burton* ſhould get by being a Witneſs; ſhe is not paid the three Pounds, nor knows not whether ſhe ſhall be paid; but laſt Winter ſhe found her in *Henrietta-Street*, and ſhe deſired her, the Witneſs, not to take Notice of her Name, nor what ſhe ſaid to her, for ſhe, the Witneſs, ſhould have her Money in a ſhort time, when the Trial was over. She told her the ſame a little before that, when ſhe lived at Major *Wildman's*; ſhe takes it to be this Winter was Twelve-month; ſhe thinks it was the Duke of *Norfolk's* Trial: She, the Witneſs, keeps a Coffee-Houſe, call'd *Joe's* Coffee-Houſe.

*William Purchase* ſaith, That he knows *Anne Burton*, ſhe declared to him about a Year and a Half after the Dutcheſs was charged with lying with Mr. *Germaine*, that ſhe knew nothing of it, and that the Dutcheſs was wrong'd as much as ever any Woman was, and that ſhe hoped to ſee thoſe puniſhed that were the Cauſe of the Accuſation. He ſaith, he went to ſee her as a Fellow-Servant, and he was not ſent by any one, and going to drink together, they fell into this Diſcourſe: He hath talked of this Matter ſeveral times, (particularly to Mr. *Welborne*,) ſince this Buſineſs was ſpoken of, having heard ſhe was to be a Witneſs againſt the Dutcheſs.

and he himſelf ſhould have a Commiſſion, and more than that too.

*Mary Sheriff* ſays, That preſſing *Anne Burton* for three Pounds that ſhe ow'd her, her Answer was, That ſhe was to be a Witneſs for the Duke againſt the Dutcheſs, and that in a ſhort time ſhe ſhould have Money, and then ſhe would pay her.

*William Purchase* ſwears, That about a Year and Half after the Report concerning the Dutcheſs and Mr. *Germaine*, *Anne Burton* told him the Dutcheſs was wrong'd, and ſhe hop'd to ſee her Accuſer puniſhed; and that he himſelf hath often ſpoke of this Paſſage to ſeveral, and particularly to Mr. *Welborne*. Take Notice that theſe Depoſitions for the Dutcheſs, as well as the former, have paſſed without any Contradiſtion: That *Germaine's* Man is neither produced nor named; the Linnen, (if any,) brought as openly as it was ſent for. No Mrs. *Knifeton* appears, and the whole Depoſition reſts upon the Credit of a forſworn Woman.

Simon



Simon Varelſt examined on the Behalf of the Duke of Norfolk, againſt the Dutcheſs. \*

**S**imon Varelſt ſaith, That he was at *Windſor* to draw the Dutcheſs of *Norfolk's* Picture about fix Years ſince, and had the Duke's Cloſet to put the Pictures in: When he had done, and had been at Home two or three Days, *Germaine* came to him much concern'd, and ſaid, you can do the Dutcheſs an extraordinary Kindneſs, and will oblige the Lord and Lady *Peterborough* in the higheſt Degree; then he ſhewed me a Letter of the Dutcheſs to me, and read it to me; before that he told me there was a Shirt and Waſtcoat, and they are known to be his: He ſaid, I deſire you to ſave the Dutcheſs's Honour; I deſire that you will be ſo much a Gentleman as to own them to be yours, and that you left them there: I answered, I was much concern'd there ſhould be ſuch a Trouble, but I deſired to be excuſed, I could not do it without Prejudice: He told me the Lord and Lady *Peterborough* had diſcourſed the Duke of *Norfolk* upon it, and if it were own'd but to be my Linnen, their Diſcourſe had wrought ſo much upon him, that if there came any Evidence to aſſiſt them, he would leave off the Purſuit. I reſuſed ſtill; he offered me a Purſe of Gold, and told me I ſhould make my Fortune by it; but I ſtill reſuſing, Mr. *Germaine* went away very much diſcontented: My Wife being in the next Room, over-heard the Diſcourſe between *Germaine* and me, and told it, and ſpoke of it, or elſe I had not been here now.

John Rothmell ſworn a Witneſs on the Behalf of the Dutcheſs of Norfolk, for invalidating the Teſtimony of Simon Varelſt.

**J**OHN Rothmell ſaith, That he lives in *Crown-Court* in *Covent-Garden*, and is a Taylor: He ſaith, he knows *Simon Varelſt*, and that he, the Witneſs, married his Half-Siſter: He ſaith, that

about a Quarter of a Year after the Buſineſs of the Dutcheſs happen'd at *Windſor*, he was at *Varelſt's* Houſe about Eleven of the Clock in the Night, and *Varelſt* lock'd the Door, and told him, he had diſparag'd him by marrying his Siſter, and ſaid, he would be his Death, and drew his Sword, and commanded him to ſtrip, that he might flaſh him at his Pleaſure; and the ſaid Witneſs did ſtrip for fear of his Life, knowing his Frenzy; and he ſtruck the Witneſs above a dozen times with his Sword, and threatned ſtill to have his Life, if he, the Witneſs, did not fetch his Wife down that Night, which was about twelve o'Clock, and which was about fix Weeks after ſhe lay in; and he was to bring her to be whipt, and to bring ſix Rods with him: Upon his, the Witneſs's Promiſe to do this, he let him go, and he hath not ſeen him ſince, but in the Street. He had Half a Year before that been diſtracted for ſix Weeks, and he, the Witneſs, fetch'd Dr. *Teniſon* to him once, and the Doctor came ſeveral times afterwards to him. One Night in that Sickneſs, he got from the Woman that watch'd him, and run about two Hours in his Shirt and Waſtcoat, in a froſty Night, and cut his Feet, and was brought Home by the Watch: He ſaith, his, the Witneſs's Wife, was to have been here this Day as a Witneſs, and was here, but having not an Hour to reckon, and being ill, is gone Home with her Midwife: He ſaith, he never durſt go near *Varelſt* ſince he abus'd him. He ſaith, that Mrs. *Varelſt*, after ſhe came from *Windſor*, ſaid, that the Dutcheſs had ill People about her, and that ſhe believ'd her to be much wrong'd, and ſaid, ſhe could clear her about the Scandal of the Linnen that was found; for whether it was, or was not Mr. *Varelſt's* Linnen, ſhe could do it; and ſaid, ſuppoſing I had brought my Huſband's Linnen down to be waſh'd, and the Landreſs fetching of it, ſhe might take it up, and leave ſome of it behind.

Thomas

\* *Observations upon the foregoing Evidence.*

**T**Here needs no more to the overthrowing of *Varelſt's* Evidence, whatever it is, than the Teſtimony of *John Rothmell*, to prove him *Non Compos*; witneſs his Outrage upon *Rothmell*, the fantaſtical Freak of ſending at Midnight for ſix Rods to whip his Siſter-in-law; and another Fit, for a matter of ſix Weeks, when Dr. *Teniſon* made him ſeveral Viſits to compoſe him, his Frenzy being ſo violent upon him, that he broke looſe from his Keepers in a froſty Night, and ran up and down the Streets in his Shirt, till he was taken up by the Watch. This is the Sum of *Rothmell's* Teſtimony, and not one Word oppos'd either to the Credit of the Witneſs, or the Truth of the Depoſitions. But it may not be amiſs, after all this, yet to ſpeak a few Words to the Likelihood of what *Varelſt* has here depos'd.

Mr. *Germaine* came to him, he ſays, with a Letter from the Dutcheſs, which he read to him, and in the Name of the Lord and Lady *Peterborough*, deſir'd him to ſay, the Shirt and Waſtcoat were his; but not one Word all this while of the Contents of the Dutcheſs's Letter. He ſays again, that the Shirt and Waſtcoat were known to be his; now if they were known to be Mr. *Germaine's*,

what Good could *Varelſt* do by taking the Matter upon himſelf; when he ſaw fair Words would not do, there was a Purſe of Gold offer'd him, and that would not work neither. The Dutcheſs and Mr. *Germaine* were wonderfully alter'd, ſure, in this Caſe, from what they were in the Buſineſs of *Owen* and *Ellwood*; there was no Purſe of Gold, or Dutcheſs's Letter to ſmother the Matter, but, on the contrary, *Ellwood* was threaten'd, provok'd, and deſy'd, inſtead of cajoling her. And what was all this for at laſt, but only to remove a Jealouſy, and moſt ridiculoſly, at the ſame time, to condemn themſelves by a Confeſſion out of their own Mouths, and improve the Suſpicion into a Certainty? Can any Body imagine that they would not have done more to have ſuppreſs *Owen's* and *Ellwood's* Evidence, than *Anne Burton's*, or *Simon Varelſt's*, who ſwears farther, that his Wife heard all this Diſcourſe betwixt *Germaine* and himſelf in the next Room, and told of it. Why was ſhe not produced then, or the Perſons to whom ſhe told it? But *Rothmell* ſwears, that Mrs. *Varelſt* ſaid, the Dutcheſs had ill People about her, and was much wrong'd, and that ſhe herſelf could clear her about the Scandal of the Linnen; ſo that 'tis plain, Mrs. *Varelſt* was not an Evidence for the preſent Turn.



Thomas Foster examined on the Behalf of the Duke of Norfolk, against the Dutcheſs. \*

**T**homas Foster ſaith, That he was Coachman to Mr. Germaine, and carried the Dutcheſs of Norfolk often, about two Years ſince, in his Coach, and brought her Home, and the Footmen have had four Half-Crowns given them; and Marting, a Dutckman, his Helper, called it *Huſb-Money*: It was by Night, againſt a Light, that he ſaw her Face in the Coach; it was about ſeven or eight of the Clock at Night, about this time a Year; he hath ſeen her Face once in the Day-time, ſhe looking out of a Saff-Window, two Stories high, in Mr. Germaine's Houſe in *Park-Street*; he knows her Face well enough; he hath ſeen her before, and ſince ſhe was married.

Witnesses ſworn on the Behalf of the Dutcheſs of Norfolk, for invalidating the Teſtimony of Thomas Foster.

**J**ohn Hall ſaith, That he lives at the Coffin in Tuttle-Street, and is a Joiner; he ſaith, he hath known Thomas Foster two Years; and that about three Weeks ſince, they being drinking together, and talking concerning the Duke and Dutcheſs of Norfolk, he ſaid, Mr. Germaine had done ill Things by him, in turning him off in Ireland, and in turning him off here; and he was reſolv'd to be reveng'd of him.

Hofea Grimſley ſaith, He lives with Mr. Germaine, and that he hath known Thomas Foster above a Year and three Months, in Mr. Germaine's Service; he heard him ſay, in the laſt Week of December laſt, in Mr. Cook's Houſe, about three Days before he was turn'd away, That he thought it no more Sin to murder his Maſter, than it was to kill a Louſe: He ſaith, he hath lived with Mr. Germaine about a Year and a Half, and that he never ſaw the Dutcheſs of Norfolk with him; and that he hath, ever ſince he came to him, lived with him in the Place where he now lives: He ſaith, he never ſaw Mr. Germaine with a Woman that was called the Lady Bateman, nor knows any ſuch Name, or Perſon.

Thomas Lloyd examined on the Behalf of the Duke of Norfolk, againſt the Dutcheſs. §

**T**homas Lloyd ſaith, He knows one that went by the Name of the Lady Bateman, at her Houſe at *Vaux-Hall*; one Germaine, a Wine-

Merchant, took the Houſe; ſhe came thither about *Midſummer*, 1689. She was off and on there 'till laſt *Michaelmas*. He hath ſeen the Perſon that went by the Name of the Lady Bateman, and it is the Dutcheſs of Norfolk. Goodman was her chief Man, and his real Name is *Reyner*. Her Brother, as was pretended, which he hath heard was Mr. Germaine, was the chief Man that came there; ſometimes he came once or twice a Week, ſometimes oftner; he's certain, as the Servants ſaid, it was Captain Germaine that came there, every Body ſaid it was he: He knows him not by his Name, but by Hearſay; if he could ſee him now, he could tell whether it was he; he hath not ſeen him ſince the Lady went away; he believes Germaine was there every Month in both the laſt Summers; he cannot ſay that Goodman was ever there when Germaine was there; he ſaw him ſeveral Times there in *May*, *June*, *July*, and *Auguſt*, 1691. Germaine's own Hair was then pretty long: He cannot poſitively ſwear he was Captain Germaine; he ſuppoſes, if he ſaw him now, he could know him.

Witnesses ſworn on Behalf of the Dutcheſs of Norfolk, for invalidating the Teſtimony of Thomas Lloyd.

**A**lexander Herman ſaith, That he ſerved Mr. Germaine; he hath left his Service a Year and a Half, about eight Weeks after he came from Ireland with the King; he ſerved him a Year and a Half: Mr. Germaine was in Ireland with the King, in the Summer, in the Year 1690. He went to Ireland two Days before the King that Summer; he continued there four Months: He believes he went the laſt of *May*, or the firſt of *June*; he came back with the King. He, the Witneſs, ſerved him all that while in Ireland, and ſaw him every Hour and every Day, and never ſtir'd from him; he came from Ireland in the ſame Ship with the Lord Villers, the Earl of Manchester, and Mr. Felton; and he went to Ireland in the *Monmouth* Yacht, with the Envoys of Holland and Brandenburg, and the Marquiſs Mompavillon. He ſaith, Mr. Germaine was at *Bruffels* in *May* laſt; he ſaw him there, and ſpoke with him there: He ſaw the Lord Villers and the Lord Lumley there with him; he lodged in the ſame Tavern there with him, for four Days, and ſaw him not after: He, the Witneſs, coming then for England, left him there. He never knew

\* *Observations upon the foregoing Evidence.*

**T**here is not one Word in Foster's Evidence, true or falſe, that's worth the hearing, only it is levelled, upon the Main, at the Dutcheſs and Mr. Germaine; and John Hall gives the Reason of it; for this ſame Foster, he ſays, was Mr. Germaine's Coachman, who, he ſaid, would turn him off, and he would be reveng'd of him. Hofea Grimſley teſtifies alſo, that ſome three Days before Foster was turn'd away, he ſaid, he thought it no more Sin to kill his Maſter, than to kill a Louſe. So that the Evidence he gives, was grounded on the Malice he bore his Maſter, for turning him off.

§ **L**loyd's Depoſition is nothing at all to the Purpose; or if it were never ſo pertinent, the Falſities in it are ſufficient to ſpoil it:

For, in Truth, his Evidence, as to Mr. Germaine's being at *Vaux-Hall*, is only grounded upon Hearſay and Report, and yet he ventures to ſwear him to be there every Month in both the laſt Summers; and particularly, that he was ſeveral Times there in *May*, *June*, *July*, and *Auguſt*, 1691. Whereas Alexander Herman ſwears, that Mr. Germaine went to Ireland in the Summer 1690, on the laſt of *May*, or the firſt of *June*, where he ſtay'd about four Months, and that himſelf ſaw and ſerved him there; and ſays farther, that he was at *Bruffels* in *May* laſt. Anthony Morée ſays alſo, being Barber to Mr. Germaine, that he went beyond Seas, and the Campaign was almoſt over when he firſt ſhaved him, after he came back from Flanders, which is a flat Contradiction to Lloyd's Evidence.

knew him wear his own Hair; his own Hair is dark brown: He never knew him appear abroad without a Wig; his Hair is about half a Finger long; he wore a fair Perriwig: He ſaith, he, the Witneſs, was quarter'd in a little Tent behind him in *Ireland*; he could not ſtir, but he heard him: He ſaith, that four Weeks after he ſaw him in *Bruffels*, he ſaw him walking in St. *James's Park*.

*Anthony Morée* ſaith, He was Barber to Mr. *Germaine*; the firſt Time he ſhaved him was about five or ſix Years ſince; his own Hair is brown; he ſhaved his Head very often; he ſhaved him before he went to *Holland*, and ſince he came Home: He never ſaw his Hair long enough to cover his Ears; nor ſaw him ever wear his own Hair, but a Perriwig: He ſhaved him for a Year and half before and ſince he went for *Ireland*: He ſhaved him always at his own Houſe near the Park: He or his Man ſhaved him ever ſince he came from *Holland* to this Day: He or his Man ſhaved him the Night before the King went for *Holland*: He ſaith, that Mr. *Germaine*, when he went away, ſaid it would be a Month or two before he ſhould come back, but he knows not how long it was: This was at his Houſe next Door to the Cock-Pit; he ſhaved him generally ſince the King came into *England*: He ſaith the Campaign was almoſt done when he firſt ſhaved him, after he came from *Flanders*.

The next Witneſſes produced by the Duke of Norfolk, were Peter Scriber, Andrew Anderson, Robert Hemming, John Reynolds, and Margaret Foſter. \*

**P**eter Scriber ſaith, That he let an Houſe, at *Vaux-Hall*, to Mr. *Daniel Germaine*, *Midſummer* was two Years, viz. 1689, at Twenty four Pounds per Annum. He told him, that two Ladies that were to come from *Holland* were to live there; one was Mrs. *Bryan*, the other the Lady *Bateman*; they went by the Name of *Daniel Germaine's* and *Captain Germaine's* Siſters. The Ladies came to the Houſe about ten Days after it was let; one *Goodman*, that attended them, was off and on there all the Time that the Lady *Bateman* lived there, which was off and on till *September* laſt: This *Goodman* is the ſame Man that was heard here the other Day, as *Henry Reyner*; he remembers not, nor can be poſitive, that he hath ſeen *Captain Germaine* there at any Time; he cannot ſay he knows him; he hath not ſeen him ſeven or eight Years. He ſaith, he, the Witneſs, is generally abſent in the Day-time; *Goodman*, he ſaith, came off and on to the Lady *Bateman's*, from the Time ſhe came thither 'till the Time ſhe went away.

*Andrew Anderson* ſaith, He knew one that went by the Name of the Lady *Bateman* a Year and half ago, at *Vaux-Hall*, from laſt Spring was Twelve-months 'till near laſt *Michaelmas*, but hath not ſeen her ſince; he knew one that went by the Name of *Goodman* that uſed the Houſe; and that *Goodman* is *Reyner*: He knew a Gentle-

man that lived by the *Cock-Pit*, that went by the Name of my Lady's Brother, which he uſed to take into his Boat at *Channel-Row*, and carry to Mr. *Scriber's* Houſe at *Vaux-Hall*. He carried him ſeveral Times backwards and forwards; ſince *Midſummer* he hath carried him twice; he uſed to carry him to the back Stairs of *Scriber's* Houſe: The ſame Day he fetch'd him, in the Forenoon, from the Parliament Stairs, or *Channel-Row*, he carried him back in the Afternoon: He had a light Wig. He, the Witneſs, hath carried Wood from *Scriber's* Houſe, from the Perſon that went by the Name of the Lady *Bateman*, to the Houſe by the *Cock-Pit*; one *Nicola* uſed to receive it into Carts, at the *Wool-Stable*. This *Nicola* was, he ſuppoſes, Servant to the Gentleman that lives in that Houſe on the other Side the *Cock-Pit*; he hath been at the Door, but never in the Houſe: He ſaith he bought the Wood of the *Bargemen*, by the Perſon's Order that was call'd the Lady *Bateman*.

*Robert Hemming* ſaith, He knew one that lived near the Dye-houſe at *Vaux-Hall*, that went by the Name of Lady *Bateman*; he ſaith, he was Gardener to the Houſe near two Years ſince, after *Midſummer* next will be three Years; he knows not the Lady, otherwiſe than by the Name of Lady *Bateman*; he hath ſeen Gentlemen come there, but he knows not their Names; he knew his Servant *Goodman*; Mr. *Knolles*, that waited on the Lady, and was chief Gardener, paid him his Wages; he knew *Goodman* by no other Name.

*John Reynolds* ſaith, That he ſaw the Lady that went by the Name of *Madam Bateman*, ſeveral Times walking in her Garden, living conceal'd; that is, ſhe lived privately, and had but little Converſation amongſt her Neighbours. The fixth of *November* laſt, being invited to dine at a Friend's at *Weſtminſter*, he met between the Lord *Peterborough's* and the Ferry, a Lady whom he believed was the ſame Lady *Bateman*; and becauſe he would not be under a Miſtake, he enquired of one that follow'd her, and he told him, it was the Dutcheſs of *Norfolk*; his Buſineſs is at the next Door to *Scriber's* Houſe: He hath ſeen a Gentleman walk with the Lady in the Garden, that his, the Witneſs's Servants have told him, was Mr. *Germaine*; he hath known the Lady live in that Place above two Years and half. He knew *Goodman*, that lived there, who now goes by the Name of *Reyner*.

*Margaret Foſter* ſaith, She knows one *Nicola*, he's Mr. *Germaine's* Gentleman, that lives next Houſe to the *Cock-Pit*. Mr. *Germaine* hath liv'd there two Years; her Husband was his Coachman; it's the *Royal Cock-Pit* in *Park-Street*, or *Carteret-Street*; Mr. *Germaine* ſent for her on *Sunday* Fortnight, to enquire for her Husband, who, he told her, was a Witneſs againſt him; and his Brother (who was preſent) told her, that his Brother did not ſend for her to bribe her, but to tell her Husband he ſhould not forſwear himſelf, for there was a Pillory.

\* *Observations upon the Depoſitions of Peter Scriber, Andrew Anderson, Robert Hemming, John Reynolds, and Margaret Foſter.*

**T**heſe Teſtimonies are all foreign to the Charge againſt the Dutcheſs; her Grace's

being at *Vaux-Hall*, and the going under borrow'd Names, is all acknowledg'd, and the Reaſons already given; beſides, the Miſtakes in them are ſo few and trivial, that it is not worth while to detect them.



Jane Wadsworth examined on the Behalf of the Duke of Norfolk, against the Dutchess. \*

**J**ane Wadsworth saith, That she sold Drink, and going into Mr. Germaine's House, a little before the King went into Ireland, for a Pint Pot, she saw a Dutchwoman, who bid her go up Stairs for it; and going up for it, she met the Dutchess of Norfolk in a Night Gown, one side lapt over the other side, with Flanders-lac'd Night-Cloaths on her Head, without a Hood on: About two Hours after, Herman, Footman to Germaine, came into her House, and she saying to him, You have got the Dutchess of Norfolk at your House, he said, No Dutchess of Norfolk: I said it was she, for I had seen her some Hundreds of Times: He said, it was his Master's Lady, and his Master's Dutchess, no Dutchess of Norfolk; why should not my Master have a Dutchess as well as the Duke of Norfolk? She hath known Mr. Germaine three Years next Midsummer, having liv'd there so long. Herman enquiring where I saw her, I said, upon the Stairs; he told me, I should not have gone up the Stairs; I told him, the Dutchwoman bid me go up: It was about Eleven o'Clock in the Day-time, that she saw her: He bid me say no more of it; for if his Master knew it, he would kill the Dutchwoman. She saw Welch Frank, about two Months since, deliver a Letter to Mr. Germaine, and she hath seen her go to the House often; she hath known the Dutchess ever since, and before she was married.

Frances Knight (examin'd before for the Dutchess) being called in, the Witness saith, this is the Woman that was call'd Welch Frank, whom she hath often seen at Mr. Germaine's; she saw her, about the Time the King came home from Flanders, give another Letter to Mr. Nicola, Mr. Germaine's Gentleman.

Witnesses produced by the Duke of Norfolk, to speak to the Credit of Jane Wadsworth.

**J**ohn Prince saith, He hath known Jane Wadsworth twelve Years, to be a good honest poor Woman, and of good Reputation, to the best of his Knowledge; and that she takes Care to maintain her Family; he believes her to be an honest

Woman, and that she would not take a false Oath; he knew her at the Horse-Ferry, and in Carteret-Street.

Emery Arguies saith, That he hath known Jane Wadsworth thirteen or fourteen Years; he never knew her but of as good Reputation as any in the Parish: She is poor, but he believes she would not take a false Oath.

Robert Elmes saith, That he hath known Jane Wadsworth twelve or thirteen Years; he thinks her a very honest Woman; he never heard but she was an honest poor Woman, that endeavoured to live and maintain her Family; she is of good Reputation.

Charles Read saith, He hath known Jane Wadsworth twelve Years, and something better; he never knew her do an ill Thing, but she was always a careful industrious Woman; he hath known her married all that Time, and she never was a Servant in that Time.

Henry Dagley, Senior, saith, That he hath known Jane Wadsworth sixteen or seventeen Years; she was always a very civil Woman, and he never heard other by her.

Witnesses sworn on the Behalf of the Dutchess of Norfolk, to the invalidating the Testimony of Jane Wadsworth.

**G**race Cook saith, That she knows Jane Wadsworth; she hath lived near her four Years; she came into the Witness's House with a Paper in her Hand, and ask'd her, Who left it? saying, She knew nothing of it: She said that she had said, that she had seen the Dutchess of Norfolk in Mr. Germaine's House, but she had not seen her a great while, and now that she had seen her, she was satisfied that it was not her; and she wish'd, that she might burn in the Fire, and never go Home to her Children, if she would take her Oath of it. The Paper was to warn her to this House; it was the first Night the Papers came out, that she said this; Hosea Grimsley, John Hall, and Margaret Condy were present when she said this: She saith, she lives next Door but one to Jane Wadsworth.

John Hall saith, That he hath known Jane Wadsworth above a Year: About a Fortnight since, she came into Mrs. Cook's, with an Order in

\* Observations upon the foregoing Evidence.

**J**ANE Wadsworth swears, She saw the Dutchess at Mr. Germaine's, and what Discourse she had afterward with Herman, Mr. Germaine's Footman, and that a Dutchwoman sent her up Stairs for a Pint Pot, by which Accident she saw the Dutchess: She says also, that she saw Welch Frank deliver a Letter to Mr. Germaine. Frances Knight being produced, Wadsworth swears that's the Woman that was call'd Welch Frank, and that she saw her give another Letter once to Mr. Nicola, Mr. Germaine's Gentleman; there are also four Witnesses produced for her Credit, that say they know no Ill by her.

But then Grace Cook, on the other Hand, swears, That Jane Wadsworth told her, that she thought she had seen the Dutchess at Mr. Germaine's, but was now satisfied that it was not she, and cursed herself and her Children, if she would take her Oath that it was the Dutchess: This

was upon her receiving a Subpoena, to appear and give Evidence. Hosea Grimsley, John Hall, and Margaret Condy, were present at this Discourse.

John Hall swears, That she said that she saw the Dutchess of Norfolk at Captain Germaine's, but upon a farther Sight of her, she finds she was mistaken.

Hosea Grimsley swears to the Discourse, the very Words of the Curse, and the Persons that were in Company; all agreeing with the Deposition of Grace Cook. Margaret Condy swears to the very same Particulars.

Alexander Herman deposes, That he never saw Wadsworth in his Master's House, nor ever had any Discourse with her concerning the Dutchess; and he being a Person turn'd away in Disgrace from his Master, would have made no Scruple to publish any Secret of that kind, at least, to swear the Truth, when upon his Oath.

in her Hand, but knew not who left it; and ſaid, ſhe could ſay nothing to it: Mrs. Cook ſaying again, You muſt ſay ſomething to it, elſe you had not had this Order from the Houſe; then ſhe ſaid, ſhe had been at the Duke of Norfolk's, and had told the Duke, that ſhe had chanc'd to go into Captain Germaine's Houſe for a Pint Pot, and ſhe chanc'd to ſee the Dutcheſs of Norfolk; but ſhe ſaid ſhe might be miſtaken, for ſhe had not ſeen her in ſeven Years before, but ſhe had ſeen her once or twice ſince ſhe came out of France, and that was none of the Dutcheſs of Norfolk which ſhe ſaw on Captain Germaine's Stairs; whereupon Hoſea Grimſley asking her, if ſhe were ſure it was not ſhe, ſhe ſaid, ſhe was ſure it was not; ſhe wiſhing that ſhe might burn, and never go home to her Children, if ſhe would ſwear it, for ſhe could not ſwear it. Hoſea Grimſley, Grace Cook, and two other Women, were preſent in Grace Cook's Houſe when this Diſcourſe happen'd, which was the very Night the Order came out. He ſaith, he wrought in Mr. Germaine's Houſe; he ſaw twice or thrice Ladies there in Masks; one of the Ladies in the Mask gave Order to take down a Partition: She was reported to be Captain Germaine's Siſter.

Margaret Condy ſaith, She knows Jane Wadſworth, who came into Mrs. Cook's the firſt Time ſhe was Subſervant, and ask'd, who left the Paper in her Hand for her? ſhe ſaid, ſhe went to Mr. Germaine's for a Pot, and ſhe thought ſhe ſaw the Dutcheſs of Norfolk there; but ſhe ſaw her ſince her coming from France, and was ſatisfied it was not her, and wiſh'd ſhe might never ſee her Children, and burn, if ever ſhe ſaw her there.

Alexander Herman ſaith, That he knows Jane Wadſworth well; he never had any Diſcourſe with her concerning the Dutcheſs of Norfolk's being in Mr. Germaine's Houſe; he ſaith, he hath drank often at Wadſworth's Houſe, but he never had any Diſcourſe with her concerning the Dutcheſs of Norfolk, nor never ſaw this Woman in his Maſter's Houſe in all his Life: He waited on his Maſter at Table, and in his Chamber, all the Time of his Service, which was a Year and half; he never ſaw a Lady in a Mask in his Maſter's Houſe.

Mary Pennington ſaith, That ſhe knows Jane Wadſworth; ſhe was her Servant, but not long, for ſhe was not honeſt. She, the Witneſs, being gone out, at her Return, ſhe met her going away with her, the Witneſs's Linnen, and her Huſband's bundled up: This is about eleven Years ſince.

Mary Pennington ſays, That Jane Wadſworth was her Servant awhile, but was not honeſt, and that ſhe had filched ſome of hers and her Huſband's Linnen, and was going away with it.

Frances Knight denies the Knowledge of Wadſworth, or any Diſcourſe with her: She never ſaw her at Mr. Germaine's, nor ever carried any Letters thither.

But here are two Witneſſes brought in now to arraign the Credit of John Hall, which is as much as to ſay, that they had no Exceptions to any of the reſt, or which is all one, to the Truth of the Matter; for John Hall's Evidence is by them confirm'd over and over. And what is it that theſe two Witneſſes have to ſay at laſt?

Frances Knight ſaith, That ſhe knows not Jane Wadſworth, nor never diſcourſ'd with her, nor never ſaw her at Mr. Germaine's Houſe, nor did the Witneſs ever carry any Letters thither.

Witneſſes examined on the Behalf of the Duke of Norfolk, againſt the Credit of John Hall.

HENRY Dagley, Jun. ſaith, That he knows John Hall; he was a Workman at Mr. Germaine's, when he, the Witneſs, wrought there; and Hall hath often ſaid to him, that he believed it was the Dutcheſs of Norfolk that was there in the Mask, and that gave him Directions in his Work there; this was at Mr. Germaine's Houſe in Park-Street: He could not affirm it to be true, becauſe ſhe was mask'd, but really believed it.

John Hoſkins ſaith, That John Hall was employ'd by Mr. Germaine, and a Lady that was mask'd; the Lady was the firſt that ever ſhew'd him his Work, what he was to do: And the firſt Work he did was to take down a Partition, we talking amongſt ourſelves, that it was the Dutcheſs of Norfolk; John Hall has ſaid that that Lady was the Dutcheſs of Norfolk, not that he could ſay ſo of his own Knowledge, but that he hath been often told it was ſo: He ſaith, that Hall told him, the Day he, the ſaid Hall, was examined here, that if he had been ask'd more he could have ſaid more.

Witneſſes ſworn on the Behalf of the Dutcheſs of Norfolk, intimating a ſeeming Reconciliation.

MRS. Judith Stourton ſaith, That ſhe was Servant to the Dutcheſs of Norfolk, when the Report was of the Dutcheſs and Mr. Germaine, which was about a Week before the Duke and Dutcheſs went to France: She was ask'd by the Lord Peterborough, in the Preſence of the Duke of Norfolk, in the Duke's Houſe in Saint James's Square, (where they ſhut the Door,) as ſhe would answer it to the Face of Almighty God, if ſhe did know whether his Daughter was an Adultereſs: Her Answer was, that as ſhe hop'd to ſee God in Heaven, the Dutcheſs was as virtuous as any Woman alive, for ought ſhe knew. She ſaith, that what ſhe then ſaid, is true; and if ſhe ſhould pretend to ſay more, ſhe ſhould wrong her. She ſaith, that no one was preſent, beſides the Lord Peterborough and the Duke, when they examined her; and that ſhe ſaw no Shirt or Waſtcoat at that time; and that ſhe doth not remember, ſhe ſaid to Mrs. Webb any thing concerning the Dutcheſs and Mr. Germaine, and

Henry Dagley ſays, That he believed it was the Dutcheſs he ſaw at Mr. Germaine's, but could not affirm it. And John Hoſkins ſays, That they ſaid it was the Dutcheſs, but he could not ſpeak it of his own Knowledge, which amounts to no more than a bare Hear-ſay.

\* Observations upon the Depoſitions of Mrs. Judith Stourton, Edith Sawbridge, Elizabeth Camell, Mr. Matthew Scott, and Mr. Robert Welborne.

THE Reader will find this Diſcourſe about Mr. Germaine and the Dutcheſs, to be a Scandal of a matter of ſix Years ſtanding; Had



and thinks she never spoke with Mrs. Webb; and she was not at *Windsor* when the Duke was at *Portsmouth*: She saith, there was a Report of Scandals, which she was sorry for.

Edith Sawbridge and Webb, produced on the Behalf of the Duke of Norfolk, to discredit the Testimony of Mrs. Stourton. \*

**E**dith Sawbridge saith, That the Tuesday following this unhappy Discourse concerning the Dutcheſs of Norfolk, Mrs. Stourton came into her Chamber, and she telling her what had happened at *Windsor*, Mrs. Stourton reply'd, this is nothing but what she expected before now: The Witness reply'd, that if she, the Witness, had been as near the Dutcheſs, as she said Mrs. Stourton, she would have prevented all this; to which Mrs. Stourton answered, would you have had me whipt at the Cart's-arse? The Discourse we had was, that Mrs. Knifeton told her, when I came from *London* on Friday Night, that she told me she was glad I was come, for she expected her Throat to be cut every Night, since my Lord Duke went to *Portsmouth*; I ask'd her the Reason of her Fear; she answered, *Germaine* had lay'd with my Lady Dutcheſs ever since my Lord Duke went to *Portsmouth*; that when he came Home he would hear of it, and he would kick her for a Bawd; and if she should tell my Lord, *Germaine* would cut her Throat; I bid her have a Care what she said, for these were dangerous Words: How can you prove this? She said, it was very true: The Witness asking her (Mrs. Knifeton,) how she knew this, she said, *Germaine*, instead of going Home, went into the Closet: The Witness cannot say, that she said all this to Mrs. Stourton, but the greatest Part she did say. Mrs. Stourton said, this was nothing but what she expected before: This was the Tuesday after my Lord Duke came from *Portsmouth*; this was about *Bartholomew-tide*, in the first Year of King James's Reign.

Mrs. Stourton called in, to confront this Edith Sawbridge, and examined.

**M**RS. Judith Stourton further saith, That she saw Mrs. Sawbridge once in the Duke's House in St. James's Square, and they talk'd of

the Slander of *Germaine* and the Dutcheſs of Norfolk: She saith, she, the Witness, never heard Mrs. Sawbridge say, that Mrs. Knifeton should say, that *Germaine* lay'd with the Dutcheſs every Night at *Windsor*: She denies, that she said to Mrs. Sawbridge that she expected to hear that before now; she never said to Mrs. Sawbridge, would you have had me whipt at the Cart's-arse? She saith, she remembers not that Mrs. Sawbridge told her that Mrs. Knifeton said, that she was afraid that her Throat would have been cut when the Duke was at *Portsmouth*: She remembers not that she ask'd Mrs. Sawbridge the Reason of Mrs. Knifeton's Fear, or that she told her any thing of Mrs. Knifeton, saying, that Mr. *Germaine* had lay'd with my Lady every Night at *Windsor*: She saw Mrs. Sawbridge, and discoursed with her; but she cannot say what Discourse she had with her.

Mrs. Elizabeth Camell saith, that she went with the Duke and Dutcheſs of Norfolk into France; they went together very lovingly, and parted so: She thinks the Duke staid with her about a Fortnight; the Duke's Eye was ill, and my Lady went often to him; and when she did so, we retired: My Lady drest his Eye; they eat and drank together every Day; they did not lodge together that she knows: My Lord told her at parting, at the Grate in the Monastery, that he would fetch her away suddenly, and they parted kindly: Mrs. Lawson was in the Monastery with the Dutcheſs; the Witness continued there about seventeen Months; my Lord exprest a great deal of Kindness to my Lady in going, and while he was there; there were Tears on both Sides at parting: When my Lord and Lady were together in the House call'd *L'Hotel de Terrau*, in Paris, we used to withdraw, not knowing what they had to say together.

Mr. Matthew Scott saith, That he paid several Sums to the Dutcheſs, from the Duke; in May 1688, he paid One hundred and twenty five Pounds for the Dutcheſs, to Mr. Cragg: He paid two or three hundred Pounds into France, when the Duke and Dutcheſs were there: He cannot say, that he remitted any Money into France, after the Duke came Home: He knows not that any Money was paid to Mr. Mourtou for my Lady, by the Duke's Order.

Mr.

son, a cast Footman, has sworn to the Shirt and Waistcoat, and that he immediately told my Lord of it. Anne Burton swears likewise, (with another false Oath between her Teeth) that this Shirt and Waistcoat were sent by the Duke to the Lord Peterborough's. It follows now to be noted, what Course has been taken from the First to the Last, for a thorough discovering of the Truth of this Matter, and how it comes to pass, that the Thunder-bolt should hang in the Air so many Years after the breaking of the Cloud.

Mrs. Stourton is here upon her double Oath, first under the Shrift of the Duke and my Lord Peterborough, who took her privately, and adjured her, as ever she hoped to see God in Heaven, to declare what she knew as to the Dutcheſs being an Adulteress; she purg'd herself upon her Hopes of Salvation, that the Dutcheſs was as virtuous as any Woman alive for ought she knew: She swore the same Thing over again at the Bar of the House of Lords, and being inter-

rogated about the Shirt and Waistcoat before spoken of, she swore likewise, that she saw no Shirt or Waistcoat at that Time.

\* Edith Sawbridge was now produced against the Credit of Mrs. Judith Stourton, and lays the stress of her Evidence upon what Mrs. Knifeton said, which has been the very Pinch of the Question throughout the whole Cause, and the Prosecution has still been at a Fault when it came to any material Point; that is to say, only the Hear-say Witnesses are produced, and those that can speak upon Knowledge, and positively to the Fact, are withdrawn, or conceal'd, contrary to the Practice and Reason of all judicial Proceedings.

Mrs. Stourton is call'd in again, to confront Edith Sawbridge, and denies every Article in her Deposition, one by one, that is of any Moment; but at the same Time there appears no Exception, on the other Hand, to the Credit of Mrs. Stourton: Neither is it to be imagin'd, that any



Mr. Robert Welborne ſaith, That about the Middle of November laſt, the Duke of Norfolk ſent for him by Mr. Scott, to meet his Grace in his Room, by the Lords Houſe, which accordingly he did: His Grace told him, there had been ſome Meſſages and Propoſals by Sir Robert Clayton and Sir Robert Howard, but he look'd on them both to be Men of great Buſineſs, and could not attend on ſuch Matters, and therefore he ſent for him, knowing him to be willing to do any Services between them. The firſt thing his Grace deſired, was to acquaint his Wife, and the Lady Peterborough, and he thinks he nam'd the Lord Peterborough, that he expected to be indemnified from the Dutcheſs's Equipage; for, ſays he, I hear ſhe is ſetting up for a great Equipage, and I deſire to be free from being obliged to pay for any of that: He told his Grace, that he thought ſhe was miſ-inform'd, for all the Equipage he ſaw, was a Coach, Coachman, two Footmen, a Pair of Horſes, and two or three more Servants. But, ſays his Grace, I formerly paid Money for her, to one Mourton, and ſhould be unwilling to do ſo again. I preſume, my Lord Duke, ſaid he, that was a Debt contracted while your Grace and the Dutcheſs lived together. But, ſays his Grace, pray do you acquaint them of it, for this is what I expect.

Next, ſays his Grace, my Wife has ſome Pretentions upon *Caſtle-Riſing*, which I could ſell without her Conſent, by loſing Two thouſand, or Two thouſand five hundred Pounds: And beſides, I find ſhe hath alſo a Pretention upon *Billing*, which I never knew till very lately, when I was upon ſelling of that Reverſion; but I ſhould have been an ill Man, to pretend to do that, if I had known of any ſuch Incumbrance. Therefore, I would have you tell my Wife, that if ſhe will conſent to the Sale of thoſe Eſtates, and make me eaſy in that Particular; let her conſider wherein I may make her eaſy, and I ſhall do it: I know ſhe was a great Lover of *Drayton*, and I ſuppoſe is ſo ſtill; and ſhe did once offer me a conſiderable Sum of Money for my Life in it: Therefore let her conſider of this Matter, and if ſhe can propoſe any thing for her Eaſe

and Quiet, on theſe Terms I ſhall comply with her.

I do not ſay it to threaten her: But I am told, that for the Reaſon of there being either One and twenty, or Two and twenty *Catholick* Heirs of my Family, before one *Proteſtant* one, if I would — (*Here his Grace ſtopt,*) ſays His Grace, You underſtand me: *Making no Answer,* his Grace was pleaſed to ſay again, If I would bring in a Bill of Divorce, I ſhould obtain it on that Account. He told his Grace he would be ſorry to hear of any ſuch Thing; but in Obedience to his Grace's Commands, he ſhould acquaint the Dutcheſs with it; accordingly he did, the ſame Day, and Lady Peterborough both. Her Grace was very angry at the Meſſage, eſpecially at that Part that mentioned a Divorce; and he was ſent the next Morning to Mr. Scott, to deſire him to acquaint the Duke, that as he was my Lord Peterborough's Servant, it was not fit for him to receive nor bring ſuch Meſſages: But if his Grace had any thing to ſay, it was moſt proper by a Servant of his own, or to ſend for one of hers. I carried the Meſſage the next Morning to Mr. Scott, and at my Return Home, the Dutcheſs ſhewed me a Letter ſhe had writ to the Duke to the ſame Purpoſe, and which was ſent to his Grace, but not by him: The Dutcheſs did declare, when he propoſed the Sale of *Caſtle-Riſing* and *Billing*, as the Duke had deſired, that ſhe would never conſent to it. By any of this Diſcourſe it did not appear to him, that the Duke ſhewed any Inclinations to live with the Dutcheſs, nor did he underſtand it ſo.

The Evidence being ended,

After a long Debate thereon, the Queſtion was put:

*Whether the Bill, Intituled, An Act to diſſolve the Marriage of Henry Duke of Norfolk, Earl Marſhal of England, with the Lady Mary Mor-dant, and to enable the ſaid Duke to marry again, ſhall be read a ſecond Time?*

It was reſolved in the Negative.

*Matth. Johnson, Cler' Parliamentor'.*

Woman ſhould dare to ſwear falſe, in a Caſe where two ſuch Witneſſes ſhould be privy to the Perjury.

It follows now to be noted, what Courſe has been taken for a thorough Diſcovery of this Intrigue, according to the uſual Methods of Honour and Juſtice. The Examination of Mrs. *Stourton* by the Duke and my Lord Peterborough, was as ſolemn, ſtrict and private as the Caſe required; and it was while the Clamour was freſh too: So that there was no Time loſt when they enter'd upon the Scrutiny. It will be ſeen in that which follows, by what Degrees the Heat of this Calumny cool'd, and what brought it on again.

The Duke and Dutcheſs went for *France* together, about a Week after the breaking out of this Clamour, and *Elizabeth Camell* waited upon the Dutcheſs, who ſwears, that they went lovingly together, and parted with Tears on both ſides; my Lord telling her Grace at parting, that he would fetch her away ſuddenly. They eat and drank together every Day, and were frequently together in private; but ſhe cannot ſay they lodg'd together. So that thus far, in all outward

Appearance, the Miſunderſtanding ſeem'd, in ſome Meaſure, to be compoſed.

Mr. Scott ſpeaks only to the Matter of Monies and Accompts, which is little or nothing to the Purpoſe in this Place, except only as to the One Hundred Twenty and Five Pounds, mentioned to be paid by him, for the Dutcheſs's Uſe; which was a Quarterly Payment out of Five Hundred Pounds *per Annum*, adjudged, and ordered by the High-Commiſſion Court, to be paid to her, in lieu of Alimony.

But Mr. Robert Welborne comes to the very Merits of the Cauſe, and the preſent State of the Queſtion. He depoſes, That in November laſt, the Duke ſent for him, and told him (among other Things by the by,) that the Dutcheſs had ſome Pretentions upon *Caſtle-Riſing*, and alſo upon *Billing*; and thereupon order'd the Witneſs to give her Grace to underſtand, that if ſhe would conſent to the Sale of thoſe Eſtates, and make the Duke eaſy in that Particular, let her but conſider wherein he himſelf might make the Dutcheſs eaſy too, and upon thoſe Terms he would do it.



His Grace told the Witness farther, That there being One or Two and Twenty Catholick Heirs to the Family, before one Protestant Heir, if (says his Grace) I would bring a Bill of Divorce, (I do not say it to threaten her) I could obtain it on that Account. The Witness acquainted both the Dutchess and the Lady *Peterborough*, the very same Day, with the Substance of this Message, her Grace taking it very heinously to be told of a Divorce; and the next Day the Dutchess shewed the Witness a Letter she wrote to the Duke upon this Occasion; declaring, that for *Castle-Rising* and *Billing*, she would never part with them.

It appears from hence, That upon the Examination of Mrs. *Stourton*, and other necessary Enquiries into the Grounds of this Scandal, the Violence of the first Impression was so far taken off, that according to the Evidence of *Elizabeth Camell*, my Lord was pleased to treat the Dutchess with all Instances of Tendernefs and Respect, both upon their Passage into *France*, and upon the Places there, those of the Bed only excepted. In this State, Matters have continued some five or six Years now, without any Speech, or Thought of a Divorce, that ever the Dutchess heard of, till the Middle of *November* last, in a Message by Mr. *Welborne* from the Duke, and that was but upon a certain Condition neither; however it was improved afterwards into a Bill, that upon the seventh of *January* following was formally brought into the Lords House.

The Reader will need no other Light to a true Understanding of the Strait her Grace was in upon this Surprise, and the Disadvantages she was exposed to, than what he has here before him, in the Order of the Journal itself: Where he will find the Dutchess so scanted for Time to produce Witnesses, and prepare her Defence, that it was a wonderful Providence she should do so much as she did. Though in the mean while, her Grace has lost the Benefit of several considerable Witnesses, for want of Time to find them out, and bring them together. Now as for Mr. *Welborne's* Deposition, it carries the Countenance rather of a Treaty than an Accusation; the Duke's Part is only a calm, deliberate Discourse, consulting the reciprocal Ease both of himself and of the Dutchess. Terms are proposed and promised, and not one Word or Glance of Reproach from one End to the other of it. Mr. *Welborne*, (upon the Duke's asking him, at the Lords Bar, if by his Discourse he understood an Inclination to live with the Dutchess) 'tis true, did not gather from his Words, as if he had any Thought of living with her; the only hard Thing said, was that about his Catholick Heirs, which seem'd to turn the Case of Adultery into a Case of Religion.

Let any Creature judge now, whether the Dutchess durst to have stood it out thus, if she had been guilty of so foul a Crime, when she might have been safe and free, as appears by the Proposal, upon Terms so much more easy.

To make a short Summary now of the Whole, a Word first to the Character and Quality of the Witnesses.

There is *Owen*, a Street-Porter, brought in as a Witness to the Privacies of the Dutchess's Bed-Chamber, besides several unanswerable Exceptions to the Particulars of his Evidence. There is *Ellwood*, a Cobler's Wife, and a jilting little Slut, that's as palpably detected of Falstity, as the other. *Hudson*, a poor tricking Footman, that was turn'd off for his ill Behaviour. *Burton*, a beggarly Wench, that cheated her Landlady, and forswore herself in this Cause at the Lords Bar. *Varellst*, a Painter, and by Intervals, a Madman. *Foster*, a Coachman that was turn'd off by his Master, and swore to be reveng'd of him. *Lloyd*, under several manifest Mistakes, but nothing to the main Cause. *Scriber*, *Anderson*, *Hamming*, *Reynolds*, and *Margaret Foster*, say not one Word to the Purpose. *Wadsworth*, a pilfering Servant, that robb'd her Mistress, and her Evidence most notoriously expos'd.

Now, as these Witnesses are of very little Value upon the Stock of their own Credit, so the Witnesses against them cannot be deny'd to have a fair Reputation, on the other Hand. And it is very extraordinary, that after the naming of so many Persons in their Depositions, that said, or did, or heard, or saw this; that the Prosecutors have not brought in so much as one Creature to second the swearing Evidence: Tho' it is sufficiently known, they could have found them, if they would have ventured the Cause upon that Stress. It is to be consider'd once more, what a Difference there has been, betwixt the Demeanour of the one Side and the other, towards the Evidence. What Promises, Flatteries, and engaging Obligations on the one Hand, and not so much as one Word or Deed, directly or indirectly, that look'd like a Practice or a Prepossession on the other Part of the Dutchess.

Let this be taken in the softest Sense; for it is a great Misfortune, when officious Instruments, that are forewarn'd to broach Scandals, meet with easy and good-natur'd Dispositions, that are too open perhaps to receive them. This may serve in some Measure, perhaps, to remove the Evidence of those that are not wilfully deaf and blind; and for the rest, it is left to Time and Providence to bring the Truth to light in its due Season, and to vindicate the Cause of the Innocent and Oppressed.



XLIV. *The Trial between HENRY Duke of Norfolk, Plaintiff, and JOHN GERMAINE, Defendant, in an Action of Trespass on the Case, at the Court of King's Bench, at Westminster, November 24, 1692. 4 W. & M. \**

THE Declaration was in *Trinity Term*, the Fourth of *William and Mary*, King and Queen. To which the Defendant pleaded Not Guilty within six Years. And it is replied, That it is within six Years; whereupon Issue was joined; and a Jury of Twenty Four Knights and Esquires being returned, Twelve did appear at the Bar, and were sworn, *viz.*

Sir Michael Heneage, of *St. Andrew's, Holborn*.  
Sir Thomas Grantham, of *Sunbury*.  
Sir Charles Humfrevill, of *Westminster*.  
Sir William Hill, of *Teddington*.  
Ralph Hawtry, of *Ryship*, Esquire.  
Robert Sheffield, of *Kensington*, Esquire.  
John Pagett, of *Drayton*, Esquire.  
Hugh Squire, of *Westminster*, Esquire.  
John Coggs, of *St. Clement Danes*, Goldsmith.  
Charles Pryor, of *Highbate*, Esquire.  
Richard Craddock, of *Hornsey*, Esquire: And  
William Withers, of *Cripplegate*, Esquire.

After the Jury were sworn, the Council for his Grace the Duke open'd the Cause.

Mr. *Banister*. May it please your Lordship, and you Gentlemen of the Jury, this is an Action brought by *Henry, Duke of Norfolk*, against one *John Germaine*. The Plaintiff sets forth, That the First of *April*, in the Second Year of the Reign of the late King *James*, the Defendant did, by unlawful Ways and Means, entice away his Dutcheſs, by which Means he had not the Benefit of her Society; and, by lascivious Conversation, committed Adultery with her, and caused her to commit Adultery: And this he layeth to his Damage 100,000*l*.

If we prove, that he did do so, we hope you will give us good Damages and Costs.

Mr. *Att. Gen.* May it please your Lordship, and you Gentlemen of the Jury, this is a very melancholy Thing to be told; yet it is fit the Age we live in may know it, so as the Offender may be punish'd. The Duke of *Norfolk* is the first Duke in *England*; install'd Knight of the most Noble Order of the Garter; Lord High Marshal of *England*, and one of the Lords of their Majesties most honourable Privy Council: And he to be thus abused, perhaps none found any such Cause to come before any Court. It is a hard Thing, as this Case is, for us to produce strong and pregnant Evidence: But our Proofs are such, as I am ashamed to repeat them; but desire the Witnesses may tell your Lordship,

and the Gentlemen of the Jury, what they know. It was not kept secret, but it was known so publickly, as all the Kingdom did ring of it; and how the Defendant had the Dutcheſs frequently to his House; and how they lived in Adultery: My Lord, we will take that Method that is most plain; therefore it will be necessary to give your Lordship an Account of something of the Beginning of this Matter.

*L. C. J.* As to the Time.

Serj. *Tremaine*. They would make this a Sort of a running Account.

Sir *W. Williams*. It must be within six Years; before the 26th of *May* last, if they will prove any Adultery; before, it is nothing.

*L. C. J.* If the Witness be not heard, it is impossible to tell whether it be within the Statute of Limitation.

Mr. *Just. Eyres*. If we hear it, and find it out of Time; then when we have heard it, we can tell the Jury how it is, whether it be within the Time; and they are to take Notice, if they open Evidence that goeth beyond six Years, I hope your Lordship will not suffer them to do that.

Mr. Serj. *Thompson*. Here are Anticipations, Directions, and what not.

*Att. Gen.* We will call our Witnesses, if your Lordship please.

Court. *Rowland Owen*, Do you know the Dutcheſs of *Norfolk*?

*Rowland Owen*. Yes.

*Att. Gen.* Do you know *John Germaine*?

*Rowland Owen*. Yes, very well.

*Att. Gen.* Pray tell my Lord and the Gentlemen of the Jury what you know of him.

*Rowland Owen*. I have seen him several Times Dine and Sup at my Lord Duke's House.

*Att. Gen.* Tell what Familiarities you have seen pass between the Dutcheſs and *Germaine*.

*Rowl. Owen*. I was order'd by one *Henry Reynier*, to go down to *Whiteball* with Plates and a Table-cloth, and he would go to the *Blue Posts* for some Things, and there was a Supper to be that Night; then to go down to *Whiteball*: When I came there, at my Lord Duke's Apartment, I open'd the Door, and afterwards going into a Room, I saw Mr. *Germaine* and the Dutcheſs in Bed together; and the Dutcheſs push'd me out, and ask'd me how I durst be so impudent as to come in, and chide me.

*L. C. J.* Who chid you?

*Att. Gen.* He saith, my Lord, the Dutcheſs of *Norfolk*.

\* This Trial, in Order of Time, should not follow the foregoing; but as it relates to the same Business, it was thought proper to insert it here.



Mr. Serj. Tremaine. Pray when was this?  
Rowl. Owen. About seven Years since.  
Mr. Serj. Tremaine. Owen, you speak of something of a Supper, and that you went down to *Whitehall*; Who gave you the Key?  
Rowl. Owen. One Henry Reyner..  
Sir Tho. Powis. What are you a Street-Porter?  
Rowl. Owen. I was Usher of the Hall.  
Att. Gen. You were Servant to the Duke, Were you not?  
Rowl. Owen. Yes.  
Sir Tho. Powis. Were they at Supper that Night?  
Rowl. Owen. I cannot tell.  
Sir Tho. Powis. You carried down Plates?  
Rowl. Owen. Yes.  
Sir Tho. Powis. This you say was seven Years ago; Who did you tell it to?  
Rowl. Owen. To the House-keeper.  
Sir Tho. Powis. Who was she?  
Rowl. Owen. One Mrs. Webb.  
Sir Tho. Powis. Did you tell no body else?  
Rowl. Owen. No, indeed, I will not lye.  
Att. Gen. We will call another Witness.  
Margaret Ellwood, Do you know the Dutcheſs of Norfolk?  
Margaret Ellwood. Yes, my Lord.  
Att. Gen. Do you know John Germaine?  
Marg. Ellwood. Yes, my Lord, about seven Years ſince; but I do not know whether I know him now.  
Att. Gen. Pray tell my Lord and the Jury what you know.  
Marg. Ellwood. It was my Buſineſs, being Houſe-keeper, to look after my proper Affairs, and I being call'd down, I ſaw my Lady and Germaine; and I ſaw my Lady in an ill Poſture upon the Stools, and my Lady ſaid to Germaine, Kick her.  
Mr. Serj. Thompson. Tell how you ſaw her.  
Marg. Ellwood. Why, when I ſaw her, I ſaw her bare Knee, and Germaine was near to her; and then I came away, ſhe being angry, and ſo he came from her.  
Court. Was his Breeches down?  
Marg. Ellwood. His Breeches was down, and his Hat and Sword lay upon the Table.  
Att. Gen. What Poſture was the Dutcheſs in?  
Marg. Ellwood. I ſaw her bare Knee, and he—  
Att. Gen. Was ſhe lying down?  
Marg. Ellwood. Yes; and the Saturday after I did ſee Mr. Germaine come in, and he laid his Hat on the Table, and unbutton'd himſelf, and went to Bed to her.  
L. C. J. How do you know that?  
Marg. Ellwood. I open'd the Drawing-Room Door, and look'd through the Key-hole of the other Door where they was, and ſaw them go to Bed.  
L. C. J. How do you know he was in Bed with her?  
Marg. Ellwood. Why I ſaw them, for there was a Wax Candle in the Chamber, and I could ſee them eaſily.  
L. C. J. What Time was this you ſay you ſaw them in Bed? Had they no Curtains?  
Marg. Ellwood. Yes, my Lord, they had; tho' they were drawn on both Sides the Bed, they left them open at the Foot.  
Court. Did you ever pretend this before?  
Marg. Ellwood. Yes, I did.  
Court. Did you ever ſwear this before?

Marg. Ellwood. Yes, my Lord, in the Parliament I did.  
Sir Tho. Powis. You have liv'd in ſeveral Places ſince; Did you never tell any body's Servant?  
Marg. Ellwood. To no body but Mrs. Webb. And my Lady gave Orders next Morning, that I ſhould be put away; but I heard no more of it; but I ſtaid.  
Att. Gen. Do you know any thing elſe?  
Marg. Ellwood. I was making my Lady's Bed, with one Anne Burton, and I found Mr. Germaine's Handkerchief and Ruffles in the Bed, at one Time.  
Att. Gen. Do you remember any Shirt and Waitcoat that was found?  
Marg. Ellwood. Yes.  
L. C. J. Did you find his Handkerchief and Ruffles in my Lady's Bed?  
Marg. Ellwood. Yes.  
L. C. J. Did you never ſee him come down Stairs?  
Marg. Ellwood. No, my Lord.  
L. C. J. It is very much you never ſaw him come down Stairs.  
Marg. Ellwood. We ſet Traps for him to fall over, but he never came down to fall over them.  
Serj. Tremaine. Do you know of any thing, but in the firſt Year of King James?  
Marg. Ellwood. No, my Lord, not I.  
Att. Gen. We will call another Witneſs, Mrs. Benſkin. I think, Mrs. Benſkin, you are married?  
Mrs. Benſkin. Yes.  
Att. Gen. What is your Chriſtian Name?  
Mrs. Benſ. Anne.  
Att. Gen. Pray tell my Lord and the Jury what you know.  
Mrs. Benſ. My Lord, I was Houſe-maid and Servant to the Dutcheſs, in the firſt Year of King James's Reign: About *Bartholomew-tide*, my Lady Dutcheſs went to London with Germaine, Nell Gwin, and ſome others, and we did not expect them to come Home that Night, but ſhe did, and after they went to Supper; after that they went to Cards; and then my Lady Dutcheſs had a great Mind to go to Bed, and bid us to make her a Fire, and ſo we did, and my Lady went to Bed, and ſaid, Tho' the King and Queen ſhould ſend for me, I would not riſe 'till Eleven o'Clock to Morrow Morning. So the Candles were put out, and two Footmen ſtood to wait, becauſe Mr. Germaine uſed to be generous to the Servants; and they waited 'till Two o'Clock in the Morning. I aſk'd them whether Mr. Germaine had come down? and they ſaid, No; for they had been there all the while; and if he came, he could not go, for they ſaid, We have laid Chairs and Stools in the Way, that if he come, he might fall over them; and the next Morning I ſaw a Man with a Paper-Box in his Hand, and he aſk'd me for Mr. Germaine's Chamber, or Lodgings; I told him, I knew none he had there. My Lord, the next Day, my Lady Dutcheſs ordered me to make her a Fire, and Mrs. Knifeton was combing her Head, and Nell Gwin came in, and ſaid, Good Morrow to your Grace; how did you reſt laſt Night? She ſaid, very well. Then Col. Cornwall came in, and ſaid to my Lady Dutcheſs, How doth Mr. Germaine do? And ſhe ſaid, Why do you aſk me? And Col. Cornwall ſaid, He did not lie at Home laſt Night. Then Nell Gwin ſaid, We ſhall ſee him come out

out by and by like a drown'd Mousse. And so I went to make my Lady Dutchess's Bed, and found a Handkerchief and Ruffles. And Mrs. Knifeton came and said, Come hither, and I will shew you a Sight; and when I came, there lay a Shirt and Waistcoat, and I took them away, because it was a Place where any Body, as they came, might see them. And my Lord Duke was not in Town.

*Att. Gen.* How came you to take Notice of the Ruffles and Handkerchief?

*Anne Bensf.* Why, Mrs. Knifeton said it was a Man's Ruffles.

*Sir Tho. Powis.* How long was this since? In Eighty five. Had there not been an Appeal?

*Anne Bensf.* Yes, there was.

*Serj. Birch.* Was there any Thing remarkable in the Bed?

*Anne Bensf.* The Bed was stained.

*Sir Tho. Powis.* What is your Name now, *Benskin*?

*Anne Bensf.* Yes.

*Sir Tho. Powis.* What was your other Name?

*Anne Bensf.* Burton.

*Sir Tho. Powis.* Was you ever married?

*Anne Bensf.* Sir, you know I could have no other Name, if I were not married.

*Sir Tho. Powis.* You have lived in several Places.

*Anne Bensf.* I have lived with my Lord of *Clare*, and my Lord *Ferrers*.

*Serj. Birch.* Did *Germaine* go by any other Name than he goeth by now?

*Anne Bensf.* Not as I know of.

*Att. Gen.* My Lord, we will call another Witness. *Thomas Hudson*, Do you know the Dutchess of *Norfolk*, and Mr. *Germaine*?

*Tho. Hudson.* Yes.

*Att. Gen.* Pray what did you observe betwixt the Dutchess of *Norfolk* and *Germaine*?

*Tho. Hudson.* Sir, I was a Servant to Mr. *Scroggs*, that was the Dutchess's Steward, and so he going away upon other Business, I was left Butler at *Windsor*; and there came two Captains to play at Cards; one Captain asked if Mr. *Germaine* was there? I told him, No. Now his Man, as I heard after, had brought *Germaine* a Shirt and Waistcoat; for, as soon as his Man was gone, we found the Waistcoat and foul Shirt: And the same Day the Dutchess treated the Queen at *Windsor*.

*L. C. J.* When was this?

*Tho. Hudson.* It was in the Year 1685.

*Sir Tho. Powis.* Was this in the Year 1685?

*Tho. Hudson.* Yes, it was so, for I took it down in my Book.

*Mr. Jones.* Did you swear all this before the House of Lords?

*Tho. Hudson.* Yes; but only the Day of the Month I could not well remember then; but I refreshed my Memory since.

*Serj. Thomp.* We will call Mrs. *Hastings* and *Elizabeth Knave*. Mrs. *Frances Hastings*, Do you know the Dutchess of *Norfolk*, or Mr. *Germaine*?

*Mrs. Hastings.* I knew nothing of them, but that they lay at my House.

*Att. Gen.* Did you know Mr. *Germaine*?

*Mrs. Hastings.* I saw him but once.

*Att. Gen.* Did you ever see Mr. *Germaine* lie at your House?

*Mrs. Hastings.* Yes.

*Att. Gen.* When?

*Mrs. Hastings.* The first Year of King *James's* Reign.

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*Att. Gen.* How long?

*Mrs. Hastings.* A whole Summer.

*Att. Gen.* We will call another Witness. *Elizabeth Knave*, Did you ever live with Mrs. *Hastings*?

*Eliz. Knave.* Yes.

*Att. Gen.* How long?

*Eliz. Knave.* A whole Summer.

*Att. Gen.* Did you ever see the Dutchess of *Norfolk*?

*Eliz. Knave.* Never.

*Att. Gen.* Did you ever see the Dutchess of *Norfolk* and Mr. *Germaine* together?

*Eliz. Knave.* No, but Mr. *Germaine's* Servant said it was the Dutchess of *Norfolk* that was with Mr. *Germaine*; and as he and I was making the Bed, I found a Handkerchief, marked with an M, and a Coronet.

*Att. Gen.* In whose Bed was this?

*Eliz. Knave.* Why, it was in Mr. *Germaine's* Bed.

*L. C. J.* How long since?

*Eliz. Knave.* In the first Year of King *James's* Reign.

*L. C. J.* Woman, did you find the Handkerchief?

*Eliz. Knave.* Yes, my Lord.

*L. C. J.* What Mark had it?

*Eliz. Knave.* An M, and Coronet.

*Serj. Thompson.* You see how far we are gone.

*L. C. J.* All without the Statute.

*Serj. Thompson.* We shall shew your Lordship, and the Gentlemen of the Jury, that my Lady Dutchess went by the Name of my Lady *Bateman*, and Mr. *Germaine* went by the Name of her Brother; and that he did take a House at *Vaux-Hall*, over the Water; the Man's Name was *Scriber*; and she lived in that Place for three Quarters of a Year and more; and then Mr. *Germaine* came constantly to her; and it was known to be the Dutchess of *Norfolk*, tho' she went by another Name, and her Servant, *Henry Reyner*, also: This *Reyner* was he, that the first Witness swore gave him a Key to her Chamber at *Whitehall*. [Henry Reyner did not appear.]

*Att. Gen.* *Peter Scriber*, Pray do you know one Mr. *Germaine*?

*Peter Scriber.* Yes, Sir.

*Att. Gen.* Pray, did he come to take any House of you?

*Peter Scriber.* Yes, Sir.

*Att. Gen.* How long since?

*Peter Scriber.* About two Years since.

*Att. Gen.* Who did he take it for?

*Peter Scriber.* He told me for a Couple of Ladies that came from *Holland*, as he told me.

*Att. Gen.* By what Name went they?

*Peter Scriber.* One by the Name of Mrs. *Bryan*, another's Name was *Madam Bateman*.

*Att. Gen.* Did you know any Gentleman, called Mr. *Germaine*, that lived near the *Cock-Pit*?

*Peter Scriber.* Indeed, Sir, I know not where he lived: I have seen one walk in the Garden, that went by the Name of the Lady *Bateman's* Brother.

*L. C. J.* Where is your House?

*Peter Scriber.* At *Vaux-Hall*.

*L. C. J.* Who paid you the Rent?

*Peter Scriber.* One Half-Year, my Lord, was paid by my Lady *Bateman*.

*L. C. J.* What Servants had she?

*Peter Scriber.* She had one that went by the Name of *Goodman*.



*Att. Gen.* We will call another Witness. *Thomas Lloyd*, Do you know the Lady *Bateman* and Mr. *Germaine*?

*Tbo. Lloyd.* Yes, Sir.

*Att. Gen.* How often have you seen Mr. *John Germaine* at *Vaux-Hall*?

*Tbo. Lloyd.* Often.

*Att. Gen.* Who was this Lady *Bateman*?

*Tbo. Lloyd.* The Dutchess of *Norfolk*.

*Att. Gen.* How do you know that?

*Tbo. Lloyd.* Because I have seen her coming out of the House of Lords; and they said it was the Dutchess of *Norfolk*.

*Att. Gen.* Are you sure of that?

*Tbo. Lloyd.* Yes, Sir.

*Att. Gen.* Did you know one *Goodman*?

*Tbo. Lloyd.* Yes, Sir.

*Att. Gen.* What is he?

*Tbo. Lloyd.* I know not, but I heard after, his Name was *Reyner*; but when he waited on the Lady *Bateman*, he went by the Name of *Goodman*: Before *Michaelmas* last was Twelve-month, I saw Mr. *Germaine* that Summer walking with the Lady *Bateman*.

*Sir W. Williams.* You say you saw Mr. *Germaine* walking that Summer with the Lady *Bateman*: What Summer was that?

*Tbo. Lloyd.* Yes, that Summer was Twelve-month.

*Sir W. Williams.* Are you sure it was within two or three Years?

*Tbo. Lloyd.* Yes, that I am sure it was.

*Sir W. Williams.* Was it the Beginning or Ending of the Summer?

*Tbo. Lloyd.* It was about the Heighth of Summer.

*Att. Gen.* We will call other Witnesses; one *Robert Hemingway*. Where do you live?

*Rob. Hemingway.* At *Vaux-Hall*.

*Att. Gen.* Do you know one that went by the Name of the Lady *Bateman*?

*Rob. Hemingway.* Yes.

*Att. Gen.* And you are sure that she went by the Name of the Lady *Bateman*: Is she Dutchess of *Norfolk*?

*Rob. Hemingway.* Yes.

*Att. Gen.* Do you know one *Goodman*, that waited upon the Lady *Bateman*?

*Rob. Hemingway.* Yes.

*Att. Gen.* Was that his right Name?

*Rob. Hemingway.* No, his Name was *Reyner*.

*L. C. J.* Where did you see her?

*Rob. Hemingway.* Near her Father's House, my Lord *Peterborough's*.

*L. C. J.* Why, How did you know this was the Dutchess of *Norfolk*?

*Rob. Hemingway.* Why, all that ever I knew, said she was so.

*Att. Gen.* Where did you see the Dutchess of *Norfolk*?

*Rob. Hemingway.* I have seen her in the House, and out of the House of the Lord *Peterborough*.

*L. C. J.* What Occasion had you to observe her?

*Rob. Hemingway.* I have seen her at her Father's House by the *Mill-bank*.

*Att. Gen.* He was a Gardener employ'd there. We will call another Witness. *Andrew Anderson*, Do you know the Dutchess of *Norfolk*?

*And. Anderson.* Never otherwise, but by the Name of the Lady *Bateman*.

*Att. Gen.* Do you know a Lady that went by the Name of the Lady *Bateman*?

*And. Anderson.* Yes.

*Att. Gen.* Do you know one Mr. *Germaine*?

*And. Anderson.* I never knew his Name; but he went by the Name of my Lady's Brother: I have carried him oft-times by Water to *Vaux-Hall*.

*Att. Gen.* Have you carried that Gentleman that lived next Door to the *Cock-Pit*, by Water to *Vaux-Hall*?

*And. Anderson.* Yes.

*Att. Gen.* By what Name did he go by?

*And. Anderson.* By the Name of my Lady's Brother.

*Att. Gen.* What is his Name? Or what Name doth he go by now?

*And. Anderson.* You know very well.

*Att. Gen.* Have you carried any Wood from *Vaux-Hall*, to the *Cock-Pit*?

*And. Anderson.* Yes.

*Att. Gen.* From whence?

*And. Anderson.* From my Lady *Bateman*.

*L. C. J.* When you did carry him by Water, where did you take him up?

*And. Anderson.* Sometimes, my Lord, at *Channel-Row*, sometimes at one Place, and sometimes at another.

*Att. Gen.* My Lord, he saith he carried from *Vaux-Hall* some Wood, and it came over, and it was carried to the *Cock-Pit*.

*L. C. J.* When you saw him then, by what Name did he go by?

*And. Anderson.* I never knew him then but by the Name of my Lady's Brother.

*L. C. J.* What Name goeth he now by?

*And. Anderson.* *Germaine*: All that know his Name, know it to be *Germaine*.

*Att. Gen.* Did you know one that went by the Name of *Goodman*, that lived at *Vaux-Hall* with this Lady *Bateman*?

*And. Anderson.* I knew not but that was his right Name then; but now I hear his right Name is *Reyner*.

*L. C. J.* When you did carry him by Water, where did you carry him?

*And. Anderson.* My Lord, sometimes to one Place, and sometimes to another, as I am commanded: I must observe.

*Att. Gen.* My Lord, we will prove that the Dutchess hath been several times with *Germaine* at the *Cock-Pit*, and that *Germaine* hath gotten a private Door into the *Cock-Pit* Yard, and so into the Park, for which he pays forty Shillings per Annum.

*Att. Gen.* Mr. *Bradbury*, where do you live?

*Hen. Bradbury.* I live next Door to Mr. *Germaine's*.

*Att. Gen.* Where is that?

*Hen. Bradbury.* By the Park-Wall, next Door to the *Cock-Pit*.

*Att. Gen.* Tell my Lord, and the Gentlemen of the Jury, how it was he had a Door.

*Hen. Bradbury.* Why, Mr. *Germaine* had no Way where he could go into the Park, so he spake to my Man, that he might have a Privilege to go through my Door into the Park; so I ordered my Man to give him, or his Servants, Passage. About a Year after, he sent a Workman to me, that he might make a Door out into the Park, and I did agree with him for a Buck, or forty Shillings in Money, which he pleased; and so a Door was made; but since he hath gotten a Door himself into the Park.

*Att. Gen.*

*Att. Gen. John Dagley*, Pray give an Account of what you know of the Dutcheſs of *Norfolk*, and Mr. *Germaine*.

*John Dagley*. I was at work there, and I ſaw a Gentlewoman going to and fro, up and down Stairs, and I asked, who that was? And I was told it was the Dutcheſs of *Norfolk*.—There was a brave curious Bed, and I was ſaying to ſome of the Houſe, that it was a very fine Bed; and asking what it might be worth, they ſaid it coſt Seven hundred Pounds: And I was then juſt married, ſaid I, (I have a mind to bring my Wife hither, and give her a *flurt* upon it;) and we laid all our Heads together as if we were ſettling the Nation; and then they ſaid, that Bed was for the Dutcheſs of *Norfolk*; and I ſaw a Perſon there, who they ſaid was the Dutcheſs of *Norfolk*.

*Serj. Birch. Richard Owen*, Do you know Mr. *Germaine* at the *Cock-Pit*?

*Rich. Owen*. Yes.

*Att. Gen.* What Company have you ſeen with him?

*Rich. Owen*. Why, I ſaw a Lady in a Mask I may ſay a hundred times.

*Att. Gen.* How often?

*Rich. Owen*. I may ſay a hundred times in a Mask, looking about: Another time I ſaw my Lord Duke of *Norfolk* walking among the Trees in the Park, and this Lady looking out of the Window towards him, in Mr. *Germaine's* Houſe: This I have ſeen; I ſpeak what I know.

*Att. Gen. Jane Wadſworth*, come tell my Lord and the Jury what you know; ſpeak out: Do you know Mr. *Germaine*?

*Jane Wadſworth*. Yes.

*Att. Gen.* Where liveth he?

*Wadſworth*. In *Park-Street*, near the *Royal Cock-Pit*.

*Att. Gen.* Have you ever ſeen the Dutcheſs of *Norfolk* at *Germaine's* Houſe?

*Wadſworth*. Yes.

*Att. Gen.* Upon what Occaſion?

*Wadſworth*. I living next Door, going in for a Pint Pot, with the *Dutchwoman* that belonged to the Houſe, and asking her for it, ſhe ſaid, there's never a Pint Pot here; it was above Stairs, and bid me go up and fetch it, and ſo I did; and I met the Dutcheſs of *Norfolk* there, ſhe had a Night-Gown on, and *Flanders-Lace*, but in Night-Linnen.

*Att. Gen.* Was ſhe undreſſed?

*Wadſworth*. Undreſſed as one may think; ſhe might have a Petticoat on.

*L. C. J.* What Occaſion had you to go there?

*Wadſworth*. For a Pint Pot, my Lord, and going up, I ſaw the Dutcheſs of *Norfolk* going from one Room to another: And, my Lord, another time, I ſaw the Dutcheſs of *Norfolk* and Mr. *Germaine* in a Coach together.

*Att. Gen.* When was that?

*Wadſworth*. It was in *March* laſt; and when I ſaw the Coachman, I asked him, who it was that he ſat down out of the Coach, and he ſaid an honeſt Gentleman, that gave him Two Shillings for the carrying him from the *Horse-ferry*.

*Att. Gen.* Have you ever ſeen Mr. *Germaine* at the Dutcheſs's Houſe?

*Wadſworth*. I did diſguiſe myſelf, and followed him to ſee where he would go; and I did ſee him go into the Dutcheſs's Houſe at *Mill-bank*.

*Att. Gen.* When was this?

*Wadſworth*. In *May* laſt.

*L. C. J.* What Time of the Day?

*Wadſworth*. My Lord, at Nine of the Clock at Night.

*Sir Tho. Powis*. When you ſay you went for the Pint Pot, did you ever ſay any Thing to any Body of it, that you had ſeen the Dutcheſs of *Norfolk*?

*Wadſworth*. Yes, to one *Harman*, that I had ſeen the Dutcheſs of *Norfolk*.—How, ſaid he, if my Maſter had ſeen you to go up Stairs, he would have kill'd the *Dutchwoman*.

*L. C. J.* Do you know my Lady Dutcheſs well?

*Wadſworth*. Yes, my Lord, I know her well; ſhe had *Flanders* Horſes ſtood in my Stable, when I kept the *Bear-Inn*, and ſhe came often to ſee them; I know her very well.

*Serj. Birch. Anne Read*, Do you know Mr. *Germaine's* Houſe?

*Anne Read*. Yes.

*Serj. Birch*. Where is it?

*Anne Read*. By the *Cock-Pit*.

*Serj. Birch*. Do you know him?

*Anne Read*. Yes.

*Serj. Birch*. What Company have you ſeen go there?

*Anne Read*. In *April* laſt I ſaw a Chair go by, and ſome Perſons ſaid, That was the Dutcheſs of *Norfolk*, and ſo I went and ſaw her in the Chair twice.

*Serj. Birch*. Did you ſee her with her Mask off?

*Anne Read*. I ſaw her with her Mask off, and ſaw her ſet down at Mr. *Germaine's* Houſe, and go in a Doors, the Door being immediately opened for her.

*L. C. J.* Did you know the Dutcheſs before?

*Anne Read*. Yes, my Lord.

*L. C. J.* Did you ſee her before this Time?

*Anne Read*. Yes, my Lord.

*L. C. J.* What Time of the Day was this?

*Anne Read*. Between Two and Three of the Clock.

*Att. Gen.* You ſay you ſaw her with her Mask off, and ſet down at *Germaine's* Houſe, and the Door was immediately open'd?

*Anne Read*. Yes, my Lord.

*Att. Gen.* Now we will call another Witneſs, one *Thomas Foſter*. Do you know the Dutcheſs of *Norfolk*?

*Thomas Foſter*. Yes.

*Att. Gen.* How did you come to know her?

*Tho. Foſter*. I drove her often in a Coach with Mr. *Germaine*.

*Att. Gen.* How long ſince?

*Tho. Foſter*. About this Time four Years.

*Att. Gen.* Where did you uſe to carry them?

*Tho. Foſter*. Sometimes into *Lombard-Street*, ſometimes to one Place, and ſometimes to another; and I look'd back, and ſaw them with their Heads laid together.

*Att. Gen.* Are you ſure it was the Dutcheſs of *Norfolk*?

*Tho. Foſter*. Yes, Sir, I knew her before ſhe was marry'd, and I knew her after.

*Sir Tho. Powis*. Did you ſee them with their Heads together?

*Tho. Foſter*. Yes.

*Sir Tho. Powis*. When you was on the Coach-Box, you ſay you ſaw them?

*Tho. Foſter*. Yes.

*L. C. J.* Did you look back to ſee them?

*Tho. Foſter*. Yes, my Lord, and their Heads were laid together.

*Serj. Tremaine*. Where do you live now?

*Tho.*



*Tbo. Foster.* With the Duke of Norfolk.

*Att. Gen.* We will call another Witness. *Mr. Bowtel.* Pray do you know Mr. Germaine?

*Mr. Bowtel.* Yes.

*Att. Gen.* Do you know the Dutchess of Norfolk?

*Mr. Bow.* Yes, Sir.

*Att. Gen.* Have you seen her?

*Mr. Bow.* Yes; I saw her come out of Mr. Germaine's House, in a Chair, into St. James's Park.

*Att. Gen.* Was it the Dutchess of Norfolk?

*Mr. Bow.* Yes.

*Att. Gen.* Did you know her before?

*Mr. Bow.* Yes, Sir.

*Att. Gen.* Had you full Sight of her?

*Mr. Bow.* Yes, Sir.

*Att. Gen.* What Apparel was she in?

*Mr. Bow.* In Man's Apparel, a Blue Coat and Peruke.

*L. C. J.* How long have you known the Dutchess of Norfolk?

*Mr. Bow.* These eight or ten Years.

*Serj. Tremaine.* Do you believe it was the Dutchess of Norfolk?

*Mr. Bow.* I do verily believe it.

*Serj. Tremaine.* Do you take it upon your Oath?

*Mr. Bow.* I do verily believe it: The Dutchess being in a Chair, the Maid came running out of Germaine's House after her, with a Handbasket.

*Att. Gen.* When was this?

*Mr. Bow.* In April last.

*L. C. J.* Are you sure it was the Dutchess's Maid?

*Mr. Bow.* She gave in Evidence as so, in the House of Lords.

*Att. Gen.* What is her Name?

*Mr. Bow.* Frances Knight, and she had a Handbasket in her Hand.

*Att. Gen.* What did you observe in the Handbasket in her Hand?

*Mr. Bow.* I suppose there was Cloaths, for I saw the Tip of a Coat, or Gown hang out.

*Att. Gen.* My Lord, we have brought this down so far —

*L. C. J.* Why, all is not within the Statute — I must direct the Jury.

*Att. Gen.* We have told you when it began. However, we will call another Witness.

*Serj. Thompson.* Mary Hall, Do you know Mr. Germaine?

*Mary Hall.* Yes, Sir.

*Serj. Thompson.* Do you know where he lives?

*Mary Hall.* Yes, at the Royal Cock-pit in Park-Street.

*Serj. Thompson.* Did you ever see the Dutchess of Norfolk in your Life-time?

*Mary Hall.* I cannot tell whether I did or not, for I do not know her, so I cannot tell when I do see her.

*Sir W. Williams.* They have call'd about nineteen Witnesses; for the first five we pass over them, for they did not speak one Word of any Thing since 86: And for the other, they have not proved any one Act in the Time of the Declaration betwixt Mr. Germaine and the Dutchess of Norfolk: They have not proved any Thing that hath any Tendency to it: They have not given any Manner of Evidence: If there be any Thing that hath any Tendency, it is that which *Jane Wadsworth* saith: And what is it that she

saith? Why, she being a Woman that sold Ale, she had let a Pint Pot go to Mr. Germaine's House; so she went for it; and the Dutchwoman that lived there, directed her to go up the Stairs for the Pint Pot. She sweareth that she saw the Dutchess of Norfolk, and she had a Petticoat on; and this is the Evidence that she hath given. She doth not pretend that Mr. Germaine was in the House, or in Company with the Dutchess; and she appeareth to be a Stranger in the House, and yet she must run up Stairs. As for her Reputation, she is one of the vilest of Women. She would say something in March or May last, but there is no Act proved by her; and she is a vile and incredible Witness, we shall call Witnesses to shew it.

*Sir Tbo. Powis.* My Lord, for this Woman *Wadsworth*, we will not only call the Person she spoke to of this, that will contradict her, and tell what she did say, but go to her Credit and Reputation. So that now, my Lord, I believe, upon the whole Matter, we cannot do the Duke of Norfolk more Honour, than to acquit the Defendant; for it will be more Honour to the Duke of Norfolk to have the Defendant acquitted, than Satisfaction to him by giving him any Damages whatsoever.

*Sir W. Williams.* We will now call our Witness, *Grace Cook.* Do you know *Jane Wadsworth*?

*Grace Cook.* Yes, Sir.

*Sir W. Williams.* Tell my Lord, and the Jury, what Discourse you and *Jane Wadsworth* have had together.

*Grace.* I will. She and I had some Talk together; and she then said, I could do them no Good, for I was mistaken.

*Sir W. Williams.* When did she tell you this? During the Sitting of the Parliament?

*Grace.* Yes: She came in and said, I can do them no Good; for, said she, I did go into Mr. Germaine's House, and thought I had seen the Dutchess of Norfolk, but now I see I am mistaken.

*Sir W. Williams.* You are a near Neighbour to her?

*Grace.* Yes, Sir.

*Sir W. Williams.* What is her Reputation?

*Grace.* I cannot say any Thing to her Reputation.

*Sir W. Williams.* Who was by?

*Grace.* There was another Woman.

*Jane Wadsworth.* I had a Subpcena, and as I was going to Mr. Germaine's House, there was one of his Servants; and I had like to have been knock'd down: And there was one Hall; What, said he, you are to go to be a Witness? What, you will swear that the Dutchess lay with Mr. Germaine? And another said, I deserved to be at Bridewell.

*L. C. J.* Who was it that told you that you deserved to be at Bridewell?

*Jane Wadsworth.* *Hosea*, his Footman. My Lord, it was not a Fortnight since I was robb'd: And it is not a Fortnight since there came in Persons, and threaten'd me, and said what they would do to me. It is not two Months since, that a Person or two did beat me, and had like to have knock'd me down; and they ran into this Woman's House, (*Grace Cook's*).

*Serj. Thompson.* You are ask'd, If those Persons that had like to have knock'd you down, did not run into Mrs. Cook's House?

*Jane Wadsworth.* Yes.

*Cryer.*

*Crier. Call Hall.*

*Serj. Tremaine.* The Question is, Whether what Mrs. Wadsworth swore was true?

*Hall.* She said she happen'd to go for a Pint Pot to Mr. Germaine's House, and going up the Stairs for it, I thought I had seen the Dutchess of Norfolk then there, but I saw it was not she: And one *Hosia Grimley* ask'd if she was sure of what she said was true? She said she would not say it for the World.

*Att. Gen.* What Trade are you?

*Hall.* A Joyner.

*Att. Gen.* Are not you employ'd by Mr. Germaine?

*Hall.* Yes.

*Att. Gen.* How long since?

*Hall.* Why, ever since King William was crown'd.

*Att. Gen.* Have you been ever since employ'd by him?

*Hall.* No; by Times I have been.

*Att. Gen.* Upon your Oath; Who did you hear this Lady was, that used to come to Germaine's House?

*Serj. Levinz.* By the Oath you have taken; Did not you hear it was reported, it was the Dutchess of Norfolk?

*Hall.* Yes, Sir.

*Serj. Birch.* Did you not whisper daily in the Ear, and say, That you believed her to be the Dutchess of Norfolk?

*Hall.* I cannot remember.

*Serj. Pemberton.* Was that Woman in such a Condition as she saith she was?

*Hall.* No; I think that she was in a good Condition as she is now.

*Serj. Thompson.* That could not be, she was fain to be carried in a Chair to the House of Lords.

*Serj. Tremaine.* Tell my Lord, and the Jury, what you heard Foster, the Duke of Norfolk's Coachman, say of Mr. Germaine.

*Hall.* Why, he said Mr. Germaine had done very ill in turning him off in Ireland, and he would be revenged of him.

— Call Foster.

*Tho. Foster.* My Lord, Mr. Hall and I were speaking something of the Duke and Dutchess of Norfolk: Then I said to him, that Mr. Germaine had done very ill by me, in turning me off in Ireland, but I did not say I would be revenged of him.

*Hall.* I happened to go to Spring-Garden, I saw Thomas Foster carrying Water to the Horses that were in the Stable, and after he and I had spoke to one another; What, says he, will not you make me drink this Morning? I told him I did not care if I did, and so we went to drink. Now, said I to him, Thomas, are not you a fine Fellow to abuse so good a Master, that would give you Money when you wanted it? Are not you sorry for it? Yes, but it is too late: But the Devil, I think, had possess'd me. And he said he was gotten drunk, and when a Man is drunk, he will say any thing: And, said he, I remember not a Word I said: And, said he, I hope my Master will pardon me: And he said, that some were promised good Employments in the Duke's Service, but none had gotten any, but one, and that is the House-keeper: And he said, She had better be a House-keeper in Hell.

*L. C. J.* Did he say he had wrong'd Mr. Germaine?

*Hall.* Yes, he did, and said he was drunk.

*L. C. J.* He was not drunk when he was in the House of Lords. He said he was sorry that he

had wrong'd his Master, and he hoped that he would pardon him.

*Serj. Tremaine.* We will call Alexander Harman.

Did you ever see that Woman Jane Wadsworth, in Mr. Germaine's House?

*A. Harman.* No, Sir.

*Jane Wadsworth.* Pray, my Lord, give me Leave, and I will tell you how it was: Alexander Harman came into my House, and I told him I had seen the Dutchess of Norfolk at Germaine's House: I told him I wanted a Pint Pot that I had sent to Germaine's House; and going thither, asking the Dutchwoman for it, she bid me go up the Stairs for it, and so I did, and then I saw the Dutchess of Norfolk. Said he to me, you should not have gone up the Stairs for it; for if my Master should know it, he would have killed the Dutchwoman.

*Sir W. Williams.* We will call another Witness. Margaret Condry, What did you hear this Woman Jane Wadsworth say?

*Margaret Condry.* She came to Mr. Cook's with a Paper in her Hand, and, said she, I thought I had seen the Dutchess of Norfolk at Mr. Germaine's House; but now she said she is better satisfied, that she never did see her there.

*Sir W. Williams.* Did she complain she was beaten and bruised?

*Margaret Condry.* Not as I know of.

*Serj. Tremaine.* She and others were examined in the Lords House, and the Lords would not believe them.

*L. C. J.* We do not know what the Lords did believe, or disbelieve, they were examined so far as to enable them to make a Law; we must now hear what the Witnesses say.

*Sir W. Williams.* We will call another Witness. Frances Knight, Pray, was you ever at Mr. Germaine's House?

*F. Knight.* No, my Lord.

*L. C. J.* The Woman said she talk'd with you there.

*F. Knight.* She will not say so to my Face.

*L. C. J.* Did you ever carry a Letter from the Dutchess to Mr. Germaine's, or to any Person in his House?

*F. Knight.* No, my Lord.

*L. C. J.* Mr. Bowtell saith, that he saw the Dutchess and this Maid. Was not you there in the Summer?

*F. Knight.* Never.

*L. C. J.* Never carried a Basket?

*F. Knight.* Never.

*L. C. J.* Did you ever go with a Chair?

*F. Knight.* No.

*L. C. J.* Call Mr. Bowtell again. Is this the Maid that had the Basket of Clothes?

*Mr. Bowtell.* Yes, I supposed them to be Clothes.

*Att. Gen.* Did she come out of the House when the Chair came?

*Mr. Bowtell.* The Chair came first out, and she followed it presently; and then I was near her, and knew her Face.

*Att. Gen.* Is this the Dutchess's Servant?

*Mr. Bowtell.* Yes, Sir; 'tis the same that followed the Chair. She was the Dutchess's Servant, I saw her then.

*Att. Gen.* When was this?

*Mr. Bowtell.* In April last.

*Att. Gen.* F. Knight, was you not (upon your Oath,) in Germaine's House in April last?

*F. Knight.* I broke my Leg then.



*Att. Gen.* How long ago was it you broke your Leg?

*F. Knight.* It was two Years.

*Sir W. Williams.* Was you in April last in *Germaine's House*?

*F. Knight.* No, Sir.

*Sir T. Powis.* Was this in open Day?

*Mr. Bowtell.* Sun was about Half an Hour high.

*Sir T. Powis.* We will call another Witness, one *Mary Penington*. Do you know one *Jane Wadsworth*; was she your Servant?

*M. Penington.* She was, and pretended to be sick; and as I was informed afterwards she was not: For there was a Man that gave Physick, and I bid him go and look upon my Maid, and he did so, and came to me and said, Your Maid may be fullen, but she is not sick; and coming to her, I found her fullen. And afterwards I met her out of my House, said I, *Jane*, What do you do here? She made some Excuse, and said, She was not well. I told her I would take Care of her: And how that they did not deserve Servants, that would not take Care of them when they were ill. I saw her muffled, and her Coats trussed up; I walked after her, and, said I, *Jane*, whither art thou a going? and bid her let me see what she had in her Coats; and I thought it was good to have Witnesses. I spake to one, and, said I, Gaffer Hall come hither; do you take Notice that this Linnen is all mine. A good while after, I saw this *Jane Wadsworth* standing at *Mr. Bird's*, said I, she was my Servant several Years ago; and my Lord, this happened when the Difference was betwixt the Duke and Dutchess; for they said, she was a grievous Witness against the Dutchess. Upon this, *Mr. Tobson*, my Lord *Peterborough's* Servant, sent for me. Then I came to be a Witness.

*Serj. Thompson.* How came she to you first of all?

*M. Penington.* She was recommended to me first; and she being minded to go away soon after she came, I said, *Jane*, if you will go, go: And then I observing when she went away, her Clothes to be trussed up, I walked after her into *Dean's-Yard*: I said to her, *Jane*, what have you in your Coats? and there I found my Linnen.

*Council for the Def.* We will call another Witness, *Mrs. Penington's* Maid.

*Maid.* I saw the Linnen that my Mistress took from her, as she said.

*Att. Gen.* Did you see any?

*Maid.* Yes.

*Council for the Def.* We will call the Defendant's Man *William*. How long was your Master in *Flanders*?

*Will.* A Month.

*Council for the Def.* Was you and your Master with the King in *Ireland*?

*Will.* Yes; I went with him, and came back again with him.

*Sir W. Williams.* It's said, he was at *Vaux-Hall* about three Years since.

*Will.* We were out of the Kingdom four Months.

*Sir T. Powis.* There is no material Evidence but what this Woman is. Now we will call another Witness. *Mr. Welburne*, Pray tell my Lord, and the Jury, what Discourse you have had with the Duke of *Norfolk* concerning his Dutchess.

*Mr. Welburne.* My Lord, about the Middle of *December* last, my Lord Duke was pleased to send for me to come to him; and so I came to *Mr. Negus*, and he carried me into the Duke of *Nor-*

*folk's* own Room. Said he, there are some Treaties betwixt me and my Wife; *Sir Robert Clayton* and *Sir Robert Howard* are concerned in them.

There is one Thing that I find, my Wife is setting up to have a great Equipage; this I do not like. I hear, said he, she is about to have a Coach, Horses, and two or three Footmen: And this is not all, there is *Castle-Rising* that my Wife hath a Pretension to, and *Billing*: Now if she will part with her Pretensions in them, I shall take it well, and it may be for our Good, and we may be reconciled. I know *Drayton* is a Seat that she hath a Kindness for: Pray tell my Wife of it, and let her consider of it; if she be willing to comply with me in this, I shall comply with her in that. And, said he, I am told, if I bring a Bill of Divorce into the House of Lords, it would take Effect. And so I went from the Duke of *Norfolk* to the Dutchess, and told her what the Duke said: And my Lord of *Peterborough* hearing of it, he was angry that I went to the Duke.

*Sir W. Williams.* Did you acquaint the Dutchess, that if she would part with her Pretensions in *Castle-Rising* and *Billing*, all Things might be reconciled?

*Mr. Welburne.* I did.

The Bill of Divorce was lodged in the House of Lords in *January* following. There is one Thing, my Lord, that the Duke said, that I had forgotten: He did speak of Two thousand five hundred Pounds, or some such Thing, he could make of *Castle-Rising* and *Billing*.

*Att. Gen.* My Lord, we will call some Witnesses as to *Mrs. Wadsworth's* Reputation, because they speak against it. *Mr. Dagley, Senior*: Do you know *Mrs. Wadsworth*?

*Mr. Dagley.* Yes.

*Att. Gen.* Pray what Reputation is she of?

*Mr. Dagley.* Very good Reputation.

*Att. Gen.* Was she ever upon the Parish?

*Mr. Dagley.* Never in her Days.

*Att. Gen.* *Mr. Prince*, Pray do you know *Mrs. Wadsworth*?

*Mr. Prince.* Yes, Sir.

*Att. Gen.* What is her Occupation?

*Mr. Prince.* A Pains-taking Woman.

*Att. Gen.* What Reputation is she of?

*Mr. Prince.* Of good Reputation.

*Wadsworth.* My Lord, I would not live with *Penington* any longer, for she kept a disorderly House.

*One of the Jury.* Pray what is that she saith?

*L. C. J.* She saith *Mrs. Penington*, with whom she lived, kept a disorderly House.

*Jane Wadsworth.* My Lord, I kept a House, and paid Sixty Pounds a Year for the *Bear-Inn*; and, my Lord, my Husband lay sick a great while; and he having a Mind to go into the Country for his Health, I had fifteen Shillings of the Church-wardens, or Overseers; and that was all that ever I had.

*Att. Gen.* We will call another Witness, one *Emry Argus*. Pray how long have you known *Mrs. Wadsworth*?

*Mr. Argus.* Many Years.

*Att. Gen.* What Reputation was she of?

*Mr. Argus.* She was always accounted an honest, laborious, Pains-taking Woman.

*Att. Gen.* Whether she did keep the *Bear-Inn*?

*Argus.* She did.

*Att. Gen.* Was she ever kept at the Parish Charge?



*Argus.* No.

*Att. Gen.* Was she ever in the Poor's Book?

*Argus.* No.

*Att. Gen.* We have proved by three substantial People, who all say, that she was always accounted an honest, laborious Woman.

*L. C. J.* Do you observe what you have proved? You have proved no lascivious Conversation; because you speak of that in the opening of the Evidence. You have not proved any lascivious Conversation within these six Years.

*Att. Gen.* The Court saith, That we have not proved the Dutchess to go beyond Sea. We will call a Witness, Mr. *Negus*. Pray did the Dutchess go over with the Duke? The Duke came back; did the Dutchess come with him?

*Mr. Negus.* The Dutchess came over again in Eighty-six; after that, she stayed in *England* some time: And about the Time of the Revolution, then it was given out that she was gone over again.

*Att. Gen.* What Time was it that you heard she came back?

*Mr. Negus.* In Eighty-nine: I can inform the Court if they please; the Time when my Lord was sued for Alimony.

*A Letter was then read in Court, from the Duke to the Dutchess.*

*Serj. Thompson.* This Cause hath been in the House of Lords: Whether they believed, or not believed, was not the Question; but they would have some Time to make some Proofs at Law.

*Att. Gen.* For, as all unlawful Conversations must have a Beginning, it is necessary we should shew something of that, and the Time, and that doth fortify the Evidence that is given within the Time.

*Sol. Gen.* Pray, my Lord, if your Lordship pleases, this is the Use we make in giving in Evidence some Things before, to shew the Fact within the six Years, their frequent meeting in a lascivious Manner; and we make Use of that before the sixth Year, to explain what Use we make of it in Matters done within the six Years.

*Serj. Tremaine.* I do appeal to your Lordship, and all that hear me, whether within these six Years they have proved any lascivious Action, or any indecent Action; so that this will not charge the Defendant: For if the Dutchess will come to his House when he is not at Home, he cannot help it. All the Proof is without the six Years, and no Proof within the six Years, to charge him to commit such a Crime: If they had carried it down, as to have proved Acts within these six Years, I should have said they had done something.

*L. C. J.* Have you done?

*Gentlemen of the Jury,* You understand very well the Nature of this Action, and the Record hath been opened to you, which was to this Effect:

That the Defendant, the first Day of *April*, in the second Year of King *James*, did entice away the Plaintiff's Dutchess, whereby he had not the Benefit of her Society; and that he had lascivious Conversation with her, lived in Adultery with her, and caused her to commit Adultery.

The Defendant pleaded, That he did not commit any thing within these six Years: What hath been before, is not now to be taken Notice of. But the Plaintiff's Council hath given in

Evidence some Acts before, which is not for any Damage they expect, but to explain some Actions that have been between them.

For my Part, I must declare, that these Matters may be given in Evidence to explain, but they are not to be given in Evidence to any other Purpose.

The first Witness is one *Owen*, and he telleth you, that he was sent to *Whitehall*, and he saith, That he went into the Lodgings there, and then he did see the Dutchess and *Germaine* in Bed together.

Then there is another Witness proves it at another Time and Place, that is, *Margaret Ellwood*, and she telleth you in what Manner she found the Dutchess and *Germaine*, and *Germaine* was very angry at her; and that his Hat and Sword lay upon the Table: And you are told by her, that looking through the Key-hole, she perceived them in Bed; she said the Curtain at the Bed's-Feet was actually open, and she saw them in Bed together, and found *Germaine's* Handkerchief and Ruffles in my Lady's Bed.

The next Witness is one *Anne Benkin*, and she saith, They were in Expectation of him one Night at *Windfor*: They stayed up till Two o'Clock, and laid Chairs and Stools in his Way, that if he came he might fall; but he did not come down that Time: All this is about seven Years ago, and out of the Time mentioned in the Declaration. And then after, they come and begin about the Year Eighty-nine, and they tell you of a Lodging at *Vaux-Hall*, at one *Scriber's* House, for a Couple of Ladies, one went by the Name of *Bateman*, and the other *Brian*; during that Time, the Man of the House knew nothing of one that went by the Name of Mr. *Germaine*, but of my Lady's Brother, he had been seen walking in the Garden: They tell you, they have seen the Lady that went by the Name of the Lady *Bateman*, and that very Lady was the Dutchess of *Norfolk*. And the Waterman saith, that he hath carried him often by Water, and he went by the Name of my Lady *Bateman's* Brother; he hath carried him from the Stairs at *Chunnel-Row* to *Vaux-Hall*, when the Lady *Bateman* lodged there: And hath carried Wood from *Vaux-Hall* by the Lady *Bateman's* Order, to the *Cock-Pit*: And there is no Manner of Question but Mr. *Germaine's* House is at the *Cock-Pit*. But then they come to Mrs. *Wadsworth*, and she is a Woman that lived next Door; and she had occasion to go to *Germaine's* House for a Pint Pot, and there coming, she met with a *Dutchwoman*, and asked her for the Pint Pot; she saith, she bid her go up Stairs for it, which she did, and then she saw the Dutchess of *Norfolk* undressed in a Morning-Gown: She said, she very well knew her, she had seen her very many times, and she was sure this was the Dutchess of *Norfolk*. She telleth you, that at another time, I think it was in *May* last, she did see Mr. *Germaine* go to the *Mill-bank*; she was sure it was him, and she did think he would go there, and thereupon she dodged him from that very Place.

She said, she told one *Harman* that she had seen the Dutchess of *Norfolk*.

How, said he, if my Master had seen you, he would have killed the *Dutchwoman*.

Then cometh one *Foster* the Coachman, and saith, That about four Years since he had carried the Dutchess of *Norfolk* and Mr. *Germaine* often-times;



times; and one time he driving them, looking back, he saw Mr. *Germaine* and the Dutcheſs of *Norfolk* lying with their Heads together. Then cometh *Bowtell*, and he telleth you, that in *April* laſt he ſaw the Dutcheſs of *Norfolk* come out of *Germaine's* Houſe in a Chair, and ſhe was the Dutcheſs, and in Man's Apparel: And he ſaid there was an old Maid had a Hand-basket, with ſome Cloaths, as he believed; ſhe followed the Chair: And this was the Servant of the Dutcheſs of *Norfolk*.

Now, *Gentlemen*, theſe are the Witneſſes that prove to you, the Iſſue in the Time mentioned.

Now, *Gentlemen*, they have called ſome to discredit theſe, they begin with *Jane Wadſworth*; they bring one *Condy* that ſhould ſay, that ſhe heard *Jane Wadſworth* ſay, That ſhe thought at the firſt it was the Dutcheſs of *Norfolk*, but ſhe was miſtaken. Then they call ſome more Witneſſes, that is, Mrs. *Pennington*, that was her Miſtreſs twelve Years ago, and ſhe ſaid, that ſhe pretended to be ſick a while after ſhe had been with her, and ſo going away, ſhe ſeeing her Cloaths tuck'd up, went to ſee what was the matter; ſhe had ſome of her Linnen: She ſaid, ſhe lived with her not above a Fortnight, and ſo ſhe parted. She ſaith, ſhe was indigent and poor, and her Maid ſaith the ſame.

And then they bring another Witneſs againſt one *Foſter* the Coachman, telling him of what he had ſaid againſt Mr. *Germaine*: He ſaid, he was gotten drunk, and when a Man is drunk he will ſay any thing.

Then as to *Bowtell*; whereas he ſaith, he ſaw the Dutcheſs in Man's Apparel, come out of Mr. *Germaine's* Houſe, and the Maid was there, and the Maid cometh and ſaith, that ſhe was not there, ſhe was ill, and her Leg was broke, and denieth that ever the Dutcheſs was there, or that ſhe ſaw her in a Chair, or in Man's Apparel.

Now, for *Anne Read*; no Evidence at all is againſt her Teſtimony, and ſhe is very poſitive of what was done in *May* laſt.

They have called one *Welburne*, who ſaith, that the Duke ſent for him, and after ſome other Diſcourſe, ſpoke to him about *Billing* and *Caſtle-Riſing*; and he ſaith the Duke ſent to him, to let the Dutcheſs know, if ſhe would not comply with him, he did not queſtion but to proſecute a Bill of Divorce in the Houſe of Lords with Effect. They tell indeed of *Foſter*, that *Germaine* had turned him out of his Service; that he ſhould ſay, he would be revenged on him, but he denied that.

And then the Dutcheſs's Letter in Eighty-ſeven was read: I cannot ſee what Inference you can make of it, but that the Duke had no Deſign of ſhewing an Unkindneſs; you have heard

the Letter read, and you may make your Inference as you will.

Then as to Mrs. *Wadſworth*; they have brought ſome Perſons to ſpeak to her Reputation, and they tell you ſhe is an induſtrious Woman, and of fair Converſation, and rented a Houſe of Sixty Pounds *per Annum*. As to what they alledged ſhe was kept by the Pariſh, it is no ſuch Thing; but her Husband being ſick, and about going into the Country, the Church-Wardens helped him with about fifteen Shillings: That ſhe was never in the Poor's Rates, or in the Poor's Books. And then as to Mrs. *Pennington*, what ſhe ſaith againſt her, ſhe answereth thus, that why ſhe did live no longer with her, ſhe ſaith, her Miſtreſs kept a diſorderly Houſe.

The Queſtion will be, What was betwixt the Dutcheſs and the Defendant within fix Years? If you are ſatisfied that there hath been any ſuch laſcivious Converſation: For if ſo be that it was only before the fix Years, to what Purpoſe was their meeting at *Vaux-Hall*, and taking a Houſe at *Vaux-Hall*; and to what Purpoſe the Dutcheſs came to *Germaine's* Houſe? So that it is left to you, *Gentlemen*, to conſider, if there hath been unlawful Converſation, and laſcivious Intercourſe between the Dutcheſs and the Defendant within theſe fix Years; if ſo, you are to find for the Plaintiff; but if not, you are to find for the Defendant.

The next Morning the Jury brought in their Verdict into Court, and being asked, Whether they found for the Plaintiff, or Defendant, ſaid, for the Plaintiff.

Being asked what Damages, they ſaid One Hundred Marks Damages, with Coſts of Court.\*

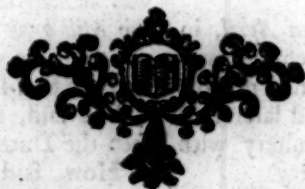
Upon which they had a ſevere Reprimand from the Court, for giving ſo ſmall and ſcandalous a Fine.

\* *The Complete Hiſtory of England*, (published by Biſhop KENNET,) Vol. III. pag. 668, ſays, That

During this Seſſion, the Town was entertained with the Trial of an indecent Cauſe in *Weſtminſter-Hall*. The Duke of *Norfolk* bearing with Impatience the ſuſpected Commerce which Mr. *Germaine* had maintained with his Dutcheſs, had the laſt Winter lodged a Bill of Divorce in the Houſe of Peers; but their Lordſhips being unwilling to proceed in that Affair, before there were ſome Proofs of the Faſt made in the Courſe of the Common Law, His Grace did thereupon bring an Action of Adultery againſt Mr. *Germaine*, before the Court of King's Bench. This notorious Cauſe was tried on the twenty fourth of November, and upon a full Hearing of many obſcene Evidences, the Jury found for the Plaintiff, and allowed His Grace, One hundred Marks Damages, with Coſts of Court: Where the Slightneſs of Satisfaction was almoſt as great a Reproach as the Crime itſelf.

The Biſhop ſays, *The Duke had lodged a Bill of Divorce, &c.* But by the foregoing Proceedings, it appears they examined Witneſſes, heard Council, and then ſlung out the Bill.

But in 1699, His Grace obtain'd an Act of Parliament for a Divorce, (See Vol. V. p. 239.) and the Dutcheſs afterwards married Sir *John Germaine*, Bart.



XLV. *The Proceedings against the Bishop of Rochester \* before the LORDS of the Privy Council, 1692, 4 Will. & Mariæ, in Relation to a Plot to Restore King James the Second.*

*Written by the BISHOP Himself.*

ON Saturday the seventh of May, of this present Year 1692, in the Evening, as I was walking in the Orchard at Bromley, meditating on something I design'd to preach the next Day; I saw a Coach and four Horses stop at the Gate, out of which two Persons alighted. Immediately I went towards them, believing they were some of my Friends coming to give me a Visit. By that time I was got to the Gate, they were enter'd into the Hall, and met me about the middle of the Court. The Chief of them perceiving me to look wistly on them, as being altogether Strangers to me, *said*, My Lord, perhaps you do not know me: My Name is *Dyve*; I am Clerk of the Council, and here is one of the King's Messengers. I am sorry I am sent on this Errand; but I am come to arrest you upon Suspicion of High Treason.

Sir, *said I*, I suppose you have a Warrant for so doing; I pray let me see it. He shew'd it me: I read it; and the first Name I lighted on being the Earl of Nottingham's, *I said*, Sir, I believe this is my Lord Nottingham's own Hand, and I submit. What are your Orders how to dispose of me? My Lord, *said he*, I must first search your Person, and demand the Keys you have about you. My Keys I presently gave him. He search'd my Pockets, and found no Papers, but some poor Notes of a Sermon, and a Letter from Mr. B. Fairfax about ordinary Business.

Now, *says he*, My Lord, I must require to see the Rooms to which these Keys belong, and all the Places in the House, where you have any Papers or Books. I straight conducted him up Stairs into my Study. This, Sir, *said I*, is the only Chamber where I keep all the Books and Papers I have in the House. They began to search, and with great Readiness turn'd over every thing in the Room, and Closets and Presses, shaking every Book by the Cover, opening every Part of a Chest of Drawers, where were many Papers, particularly some Bundles of Sermons; which I told them were my proper Tools, and that all that knew me, could Vouch for me; it was not my Custom to have any Treason in them. They read several of the Texts, and left them where they found them. But in one Corner of a Press, which was half open, they met with a great Number of Letters fill'd up. I assur'd them they were only Matters of usual friendly Correspondence, and most of them were of last Year's Date. Mr. *Dyve* looking on some of them, found them to be so; and *said*, If he had Time to view them all, he might, perhaps, see Reason to leave them behind; but being expressly com-

manded to bring all Letters, he must carry them with him. I left him to do as he pleas'd; so they seal'd them up.

Then they went into my Bed-chamber, and the Closets adjoining, doing as they had done in my Study, feeling about the Bed and Hangings, and knocking the Wainscot in several Places, to see if there were any private Hole, or secret Conveyance.

After that, they came down Stairs, and search'd the Parlour and Drawing-Room on that Side of the House with the like Exactness. In all these Rooms I observ'd they very carefully pry'd into every Part of the Chimnies; the Messenger putting his Hand into every Flower-Pot, which I then somewhat smiled at: But since I found he had but too much Reason so to do.

When they had done searching in all those Rooms, and in the Hall, as they were going out, and had taken with them what Papers they thought fit, they carried me away in the Coach that brought them. By the Way, we met my Servant Mr. Moor, coming from London: I call'd out to him, Have you any Letters for me? He gave me three or four, which I deliver'd to Mr. *Dyve* to open, who found nothing in them but Matters of private Concernment, or ordinary News. And so between Ten and Eleven at Night, we arrived at Whitehall, and I was brought to my Lord Nottingham, whom I found alone in his Office.

My Lord, *said I*, I am come upon your Warrant; but certainly there must be some great Mistake, or black Villany in this Business: For I declare, as in the Presence of God, I am absolutely free from any just Accusation relating to the Government. *His Lordship told me*, He himself was much surprized when he heard my Name mentioned. I intreated him I might be examined that Night, if any Witnesses could be produced against me. *He said*, That could not possibly be, because the Lords, who had the Management of such Affairs, were separated, and gone Home: But that I was to appear before them the next Day; and in the mean Time, all the Civility should be shewn me, that could be expected by a Man in my Condition.

My Lord, *said I*, I hope, it being so very late, you will suffer me to lie at my own House at Westminster. *He reply'd*, You shall do so; but you must have a Guard of Soldiers and a Messenger with you. A Guard of Soldiers, *said I*, My Lord, methinks is not so necessary to secure one of my Profession; I should rather offer, that I may have two or more Messengers to keep



me, tho' that may put me to greater Charges. My Lord, *said he*, I, for my own Part, would be glad if I might take your Parole; but I must do what I may answer to others, and therefore I pray be content.

At this I acquiesced; *only adding*, My Lord, here are divers Papers brought up with me, which upon my Credit, are but of common Importance; yet, because they are most of them private Talk among Friends, there may be some Expressions, which no Man, if it were his own Case, would be willing to have divulg'd; and therefore I desire your Lordship will take Care they may not be shewn to the Prejudice of any. *He answer'd*, You have to do with Men of Honour: And you shall have no Occasion to complain upon that Account.

And so I was convey'd Home to *Westminster* by Mr. *Dyve*, and Mr. *Knight* the Messenger in the Coach with me, and a Guard attending on each Side. After we came to the Deanery, Mr. *Dyve* having diligently survey'd my Lodgings, and the Avenues to them, left me about Midnight, with a strict Charge to the Messenger and Soldiers, not to give me any unnecessary Disturbance; but to watch carefully at my Bed-Chamber Door, 'till further Orders, which they did.

The next Day, being *Sunday*, May the eighth, Mr. *Dyve* came again to me about Noon, to acquaint me, That I was to attend the Committee of the Council that Evening by Six of the Clock. And, *says he*, My Lord, I suppose you have here also at *Westminster*, a Room where you keep the rest of your Books and Papers. I told him, I had. Then, *said he*, I have a Commission to search there likewise; particularly in your Cabinet. I shew'd him my Library, and gave him the Keys. He opened all the Presses of Books, and view'd particularly every Shelf, and examined every Drawer in the Cabinet: But finding nothing there of a late Date, or that might afford any the least Shadow of a Traiterous Correspondence, he went away without removing any one Paper thence.

At the Time appointed, I was brought by the Messenger and Guard to *Whitehall*, where a select Number of the Lords of the Council were assembled at my Lord *Nottingham's* Lodgings. There were present, (as I remember,) the Earl of *Devonshire*, Lord Steward; the Earl of *Dorset*, Lord Chamberlain; the Earl of *Nottingham*, Secretary of State; the Earl of *Rochester*, the Earl of *Portland*, the Lord *Sydney*, Lord Lieutenant of *Ireland*, and Sir *Edward Seymour*.

When I was enter'd the Room, and come to the End of the Table, my Lord *Nottingham* began.

*Earl of Nottingham*. My Lord, you cannot but think it must be some extraordinary Occasion which has forc'd us to send for you hither in this manner.

*Bishop of Rochester*. My Lord, I submit to the Necessities of State, in such a Time of Jealousy and Danger as this is.

*Earl of N.* My Lord, I am to ask you some Questions, to which we desire your plain and true Answers.

*Bishop of R.* My Lords, I assure you mine shall be such; as, I hope, I have been always taken for a Man of Simplicity and Sincerity.

*Earl of N.* Have you compos'd a Declaration for the present intended Descent of the late King *James* into *England*?

*Bishop of R.* I call God to Witness, I have not.

*Earl of N.* Did you ever draw up any Heads, or Materials for such a Declaration?

*Bishop of R.* Upon the same solemn Affirmation, I never did.

*Earl of N.* Were you ever solicited, or apply'd to by any Person, for the undertaking such a Work?

*Bishop of R.* I never was.

*Earl of N.* Do you hold any Correspondencies abroad in *France*?

*Bishop of R.* I do not hold any.

*Earl of N.* Have you ever sign'd any Association for restoring the late King *James*?

*Bishop of R.* I never sign'd any.

*Earl of N.* Do you know of any such Association? Or any Persons that have subscribed one?

*Bishop of R.* Upon the Word of a Christian, and a Bishop, I know of no such thing; nor of any Person who has subscribed any Paper of that Nature.

Sir *Edward Seymour*. My Lord Bishop of *Rochester*, We have examined the Papers that were seized in your Closet at *Bromley*: We find nothing in them, but Matters of ordinary and innocent Conversation among Friends; only we have one Scruple, That there are few or no Letters among them written since *Lady-Day* last.

*Bishop of R.* Sir, I suppose there may be some of a Date since that Time in the Bundles: If I had preserv'd more, they would have been of the same Nature with the rest that you have, that is, concerning common Intelligence, and the Talk of the Town; not any Secrets of State, or against the Government. My Lords, I hold no Correspondencies of that kind. When I am in the Country, I desire some Friend or other here, to let me know how the World goes, that I may inform myself, and the Neighbouring Gentlemen, of the Truth of Things, and prevent the Spreading of false News: And afterwards I file up such Letters according to their Dates, (as you may perceive I did these,) that at any time I may have a present Recourse to them to refresh my Memory in any past Transaction.

*My Lords*, Those are all I thought worth keeping of this kind these two last Years: And I hope the Clerk of the Council has done me the Justice to acquaint your Lordships, how I was apprehended, out of my House; and how narrowly I myself, and my Study, and Lodging-Chamber, and other Rooms, were search'd: So that it was impossible for me to have suppress'd, or smother'd any one Writing from you. And really I believe there was not a Note, or least Scrip of Paper of any Consequence in my Possession, but they had a View of it.

*Earl of Devon*. But, my Lord, it is probable a Man of your Interest and Acquaintance, must have received more Letters since, than are here to be found. We see here are many concerning Affairs that pass'd just before that Time.

*Bishop of R.* My Lords; A little before the Conclusion of the last Session of Parliament, I obtain'd Leave of the House of Lords to retire into the Country, for the Recovery of my Health. During my Abode there, as long as the Parliament continued, I was somewhat curious to learn what pass'd in both Houses; and therefore, as  
your

your Lordship has observ'd, Letters came thicker to me about that time: But when the Parliament was up, very little happening that was remarkable in that Interval, I was not so mindful to preserve the Letters that came to me, whilst all Things, both Abroad and at Home, were rather in Preparation than Action.

Besides that, since the Time your Lordships speak of, I was twice or thrice in Town for several Days together; once especially, upon a publick Occasion, the Annual Election of *Westminster* School, which detain'd me here about a Week: And these are the true Reasons why you find so few Letters to me since the Date of Time your Lordships have mentioned.

Earl of N. Will it please your Lordships to ask the Bishop of *Rockester* any more Questions?

They being all silent, *I said,*

*My Lords,* I cannot imagine how it comes to pass, that I should be thus suspected to be guilty of any Contrivance against the Government: I think I may appeal to all that know me, I am sure I may to all my Neighbours in the Country where I live, that there has no Man submitted to it more peaceably and quietly than I have done, ever since the *Revolution*; and I must own, I did it both upon a Principle of Conscience and Gratitude. Of Conscience; because I cannot see how the *Church of England*, and the *Whole Protestant Religion*, can be preserv'd, but upon this Foundation; since an Invasion from *France* cannot but be destructive to *Both*. And of Gratitude; because, as you all know, I happen'd to be, in the late Reign, engag'd in an Affair, which since I have been taught was illegal. [*The Ecclesiastical Commission.*] And though I may say, I stopp'd betimes, and did no great Hurt, but hindred, as much as I could, whilst I acted; yet I acted so long, that I might have expected to be severely punish'd for what I did. But the King's and Queen's Part, in the General Pardon, was so Gracious and Benign, in making it their own Act, and not excluding me out of it, that their Majesties have thereby laid upon me an Obligation never to be forgotten.

Upon this I was bid to withdraw; and about an Hour after, the same Clerk of the Council was sent to tell me, The Lords had order'd I should return to my own House, and be under the same Confinement as before, of a Messenger, and a Guard of Soldiers: And there I should shortly hear what their Lordships would determine concerning me. *He likewise told the Messenger and the Guards,* That he had a strict Command to them, to use me with all Respect; only to take Care that I should be safely kept, and forth-coming. Nor indeed had I any thing to object against their Behaviour: For, as Mr. *Dyve* demean'd himself always to me like a Gentleman, and the Messenger was very Civil, so the Soldiers themselves were as easy and quiet to the rest of my Family, as if they had been a Part of it.

The same Evening Mr. *Dyve* came Home to me, and brought me all my Papers, telling me, That the Lords had heard him read them over; and, having no Exception against them, had sent him to return them all safe to me again.

Thus guarded, I continued from that Day, 'till the 18th of *May*, under the Custody of a Messenger, and of four Centinels, who watched Day and Night, and were relieved every eight and forty Hours.

But then, having heard nothing in the mean Time from the Lords, I wrote this Letter to the Earl of *Nottingham*.

MY LORD,

“AS I have all this while, according to my Duty to their Majesties Government, with Patience and Humility, submitted to my Confinement under a Guard of Soldiers, and a Messenger; so now, fearing that my longer Silence may be interpreted as a Mistrust of my Innocency, I think it becomes me to make this Application to your Lordship, earnestly intreating you to represent my Condition and Request to the Most Honourable Board, where I was examined. I entirely rely on their Justice and Honour, that, if they find nothing real against me, (as God knows, I am conscious to myself they cannot,) they would be pleased to order my Enlargement. I am forced to be the more importunate with your Lordship in this Business, because it is very well known, in what a dangerous Condition of Health I went out of Town towards the latter End of the Session of Parliament: And I find my Distemper very much increased by this close Restraint, in a Time when I was just entering upon a Course of Physick in the Country.

*My Lord,*

*I am Your Lordship's most humble,  
and most obedient Servant,*

*May 18. Westminster.*

*Tho. Roffen.*

To the Right Honourable the  
Earl of *Nottingham*, Principal  
Secretary of State,

This Letter was read in the Cabinet-Council that Day, and it had the desired Effect; for thereupon I was ordered to be discharged that Evening; which accordingly was done at Ten at Night, by Mr. *Shorter*, a Messenger of the Chamber, coming to my House, and dismissing the Messenger, and taking off the Guard.

The next Morning, being *May* the 19th, to prevent any Concourse, or Congratulations, usual upon such Occasions, I retired early to *Bromley*, where I remained quiet 'till *June* the ninth, little dreaming of a worse Mischief still hanging over my Head.

But that Day, being *Thursday*, as I was upon the Road, coming to *Westminster*, to the Meeting of Dr. *Bushy's* Preachers, who assemble once a Term at my House there, I was stop't by a Gentleman, that brought me this Letter from my Lord *Nottingham*.

*Whitehall, June 8, 1692.*

MY LORD,

I Must desire your Lordship to be at my Office on Friday Morning by Ten of the Clock.

I am your Lordship's  
Most humble Servant,

*Nottingham.*

For the Right Reverend the  
Lord Bishop of *Rockester*,  
at *Bromley*.

I asked



I asked the Bearer, whether he had any farther Orders concerning me : *He answered*, No : But was forthwith to return. I desired him to acquaint his Lord, that I was now going to Town upon other Business, but that I would presently wait on him at *Whitehall* : Accordingly from *Lambeth* I went to his Office. When my Lord came to me, I told him, that having met with his Lordship's Letter accidentally in my Way to *Westminster*, I thought it best to come presently to know his Pleasure.

*Earl of N.* My Lord, there is a Mistake ; I gave you Notice to be here to Morrow Morning : And that is the Time you are appointed to appear before the Committee of the Council.

*Bishop of R.* However, My Lord, being in Town occasionally, I thought it became me to present myself to you as soon as I could : And I now make it my Request, if your Lordships have any thing farther to say to me, I may be convened before you this Day.

*Earl of N.* I fear you cannot be so, for there is much Business to be this Afternoon, both at the Great Council, and the Committee ; but I will send you Word to the Deanery, if you can be called this Evening : In the mean Time you have your full Liberty to go where you please.

Thus I went Home ; but having no Notice from my Lord that Night, the next Day, being *June* the 10th, about Ten of the Clock, I came to his Lordship's Office, where were met the same Lords as before ; only, I think, the Earl of *Portland* was not there, and the Earl of *Pembroke*, Lord Privy-Seal, was.

When I was called in, besides the Privy Counsellors that sat about the Table, there was standing against the Wall a very ill-favour'd Man, who afterwards prov'd to be *Blackbead* ; with whom I strait perceiv'd I was sent for to be confronted.

For, as soon as I was in the Room, my Lord *Nottingham* said, My Lord, Do you know that Person ?

*Bishop of R.* My Lord, I have seen this Man's Face, but I cannot immediately recollect where.

*Earl of N.* I pray view him well. Has he never brought you any Letters from one Mr. *Young* ?

*Bishop of R.* I do call to Mind, he has brought me a Letter. I cannot in a Moment remember from whom it was.

*Earl of N.* He says it was from one *Young*.

*Bishop of R.* I think it was at my House at *Bromley*, that he deliver'd it me ; but I verily believe, it was not from any of the Name of *Young*.

*Blackbead.* I was with the Bishop of *Rochester* at *Bromley* : I brought him a Letter from Mr. *Young*, and I received an Answer to Mr. *Young* back again from the Bishop.

Thus far, during the beginning of this Examination, I stood with my Face against the Window, and my Eyes being so very tender and feeble as they are, I had not a perfect View of *Blackbead* ; but he so confidently affirming, That he had of late carried Letters between me and one *Young*, I changed my Station, and got the Light on my Back ; and then immediately, having a true Sight of his very remarkable Countenance and Habit, and whole Person, and being also much assisted by his Voice, which is very loud and rude, I did (by God's Blessing) perfectly call him to Mind.

*Bishop of R.* Now, my Lords, by the Advantage of this Light, I do exactly remember this Fellow, and Part of his Business with me at *Bromley*. What he says of *Young* cannot be true. I know not for what Purpose he affirms this ; but upon my Reputation, it is utterly false, that he ever brought me a Letter from one *Young*.

*Earl of N.* My Lord, He says particularly, it was upon a Fast-Day.

*Bishop of R.* My Lords, I do remember this Fellow was with me at *Bromley* on a Fast-Day : By the same Token, I told him, he should stay 'till after Evening-Prayers, and must expect only a fasting kind of Meal. But then I would return an Answer to his Business.

*Blackbead.* It was upon a Fast-Day. I did eat with the Bishop's Servants ; and I received an Answer from his own Hand, to the Letter I brought him from Mr. *Young*.

*Bishop of R.* My Lords, This that he says of *Young*, is a wicked Lye : All my Correspondencies are so innocent (as I hope your Lordships can testify) that, if I had received a Letter from any Mr. *Young*, I should have no Reason so positively to deny it. I beseech you, examine this Fellow thoroughly, and I doubt not but you will discover some impudent Knavery. I stand to it ; I am sure there is no Person whose Name is *Young*, with whom I have of late Years maintain'd any Inter-course by Letters.

*Earl of Devonshire.* My Lord, Is there no Person of the Name of *Young*, a Clergyman, with whom you are acquainted ?

*Bishop of R.* Oh ! My Lord, There are two excellent Persons of the Name of *Young*, both Clergymen, to whom I have the good Fortune to be very well known : The one was your Brother *Offery's* Chaplain, and is now Prebendary of *Winchester* ; the other was Canon of *Windsor*, when I was a Member of that Church, and is there still. But I suppose, neither of these are the *Youngs*, whose Correspondence this Man objects to me. I should take it for an Honour to correspond with them. But, in Truth, it has so happen'd, that I have neither written to, nor received one Letter from either of them these many Years, to the best of my Knowledge.

*Blackbead.* The Bishop, if he please, may remember it was *Robert Young*, from whom I brought him a Letter.

*Earl of N.* How long ago say you it was ?

*Blackbead.* It was about two Months ago ?

*Bishop of R.* I have indeed, my Lords, some obscure Remembrance, that some Years ago, there was one writ to me out of *Newgate*, under the Name of *Robert Young*, pretending to be a Clergyman ; and I recal something of the Contents of his Letter. It was to tell me, That he and his Wife lay in Prison there upon a false Accusation, of which he hop'd they should be speedily clear'd. In the mean Time, he desired me to recollect, that he had officiated some Weeks for the Chaplain at *Bromley-College*, and had preach'd once or twice in the Parish-Church there. He intreated me to give him a Certificate of this, because it would stand him in much Stead, in order to his Justification : And withal, that I would send him something out of my Charity, for his and his Wife's Relief in their great Distress.

This, my Lords, I dare say, was the whole Substance of that Letter, and this was two or three Years ago at least.



To that Letter I am sure I made no Reply in Writing. Only, having not the least Remembrance of him myself, I enquired in the Neighbourhood, and among the Widows in the College; intending to have sent him some Alms, suitable to his Condition and mine, had I found him worthy.

But upon Enquiry, I received from all Hands so very ill a Character both of this *Young*, and his Wife, that I resolv'd to give him no Answer at all; and I have never heard any thing more of him to this Day.

But now, I beseech your Lordships, to give me Leave to speak to this Person myself: And they intimating I should do as I thought best, I said to him;

I conjure you, in the Presence of these Noble Lords, and especially of the Great LORD of Heaven and Earth, that you will declare the Truth of what I am going to ask you.

When you came to my House at *Bromley*, upon a Fast-Day it was, I think the first Fast of this Year; Did not you desire to speak with me, as having a Letter for me? When I came to you into my Hall, Did not you first kneel down, and ask me Blessing? Did you not then deliver me a Letter, affirming it was from a Country Minister, a Doctor of Divinity? Did not you tell me, You were his Servant, or Bailiff? And that your Master had sent you on Purpose, many Miles, to receive an Answer yourself to that Letter from my own Hand?

*Blackhead.* I never brought a Letter to the Bishop of *Rockester* from a Country Minister; I know no such Doctor of Divinity: Nor ever was Servant to any: I only brought a Letter to the Bishop from Mr. *Young*.

*Bishop of R.* My Lords, what I say is most certainly true. This Man had never any other Business with me, but in relation to that Letter, pretended by him, (for now I find it was but a Pretence) to be written to me by an eminent Country Divine in *Buckinghamshire*, a Person of a considerable Estate, as he told me. My Lords, I cannot yet call to Mind the Doctor's Name: But the Business of the Letter I am in great Part Master of, and it was to this Purpose:

That there was a Person, (naming him,) who had apply'd to him to be his Curate; but that he had Reason to suspect he had counterfeited my Hand and Seal for Holy Orders: Therefore he desired me to send him Word under my own Hand by the Bearer his Man, whether I had Ordain'd such a One, in such, or such Years: That if I had, he would encourage and entertain him; if not, he would take care he should be punish'd for his Forgery.

Now, my Lords, upon the Receipt of so friendly a Letter by this very Messenger, I bid him stay a little, and I would give his Master Satisfaction out of my Books, whether I had Ordain'd any Man of that Name; which I thought I had not. Accordingly, my Secretary, and I, did severally turn over all my Papers relating to such Affairs, as carefully as we could; and finding no such Man's Name in them; in which we could not be easily deceiv'd, because I keep Methodically (as, no doubt, every Bishop does) all Recommendations, Subscriptions, Testimonials, and Titles of those I admit into Orders; I wrote the supposed Author of the Letter, as civil an Answer as his seemed to deserve.

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That I was extremely pleased, and thankful, that a meer Stranger to me should be so careful of my Reputation: That my Secretary, and I, had diligently examin'd all the Books, where such Things are recorded: And I could assure him, I never had Ordain'd any such Person, either Priest or Deacon, within the Space limited in his Letter, or at any other Time: That I should look upon it as a signal Service done to the Church in general, and a special Favour to me in particular, if he would, as he promised, cause the Counterfeit to be apprehended, so that the Course of Law might pass upon him.

This Letter, my Lords, all written with my own Hand, I deliver'd to the Person here present: And he went away with it, asking me Blessing again upon his Knees, and promising I should speedily be made acquainted with the Success.

*Earl of Devonshire.* I pray, my Lord, how was the Letter superscrib'd you sent back by this Man?

*Bishop of R.* My Lord, it was to the same Person, with the same Superscription as he subscrib'd himself, and directed to the same Place, where he said he was Minister; tho' the Name of Place or Minister I cannot yet recover. But let that Letter of mine be produced, and it will put an End to this whole Controversy.

*Blackhead.* The Letter I received from the Bishop, was superscrib'd to Mr. *Young*, and to no other.

*Bishop of R.* My Lords, this is a horrid Falshood. I well remember now, this Fellow was at my House a second Time, some Weeks after the first. When he came, I was in the Garden with some Gentlemen, my Neighbours; where, first asking me Blessing, he told me, His Master, the Doctor had taken up the Person who had forg'd my Orders: That the Man stood upon his Vindication; but that his Master was bringing him up to *London*; and then I should hear farther from him: Adding, That his Master was a Man of such a Spirit, and such a plentiful Estate, that whenever he suspected a Man to be a Rogue, or a Cheat, he would spare no Pains to discover him, nor think any Cost too much to get him punish'd. These, my Lords, I well remember, were the Knave's very Words: And I hope your Lordships will likewise deal with him in the same Manner. I took this second Message still more kindly, and order'd my Servants to entertain the Messenger very civilly.

*Blackhead.* I brought no such Message. All my Business with the Bishop was from Mr. *Young*, which I suppose was of another Nature.

*Bishop of R.* What I say is so true, that I am confident several of my Servants do remember the Particulars. For this Man stuck not to declare his Business before them all; very much magnifying his Master, and his House-keeping, and vapouring what an Example he would make of the counterfeit Priest, without putting me to any Trouble, or Expence.

*Earl of Devonshire.* Has your Lordship none of those Servants, near at Hand?

*Bishop of R.* My Lord, some of them are in Town; and one, my Secretary, Mr. *Moore*, by an accidental good Fortune, came hither with me: He was without, when I was call'd in. I doubt not but he will satisfy your Lordships what was this Man's Errand to me: He is a young Man of great Honesty, and, I believe,

M

would



would not tell a Lye to save my Life: I am sure I would not have him.

Whilst they were calling in Mr. Moore, I added; My Lords, I appeal to the great God of Heaven to judge between me and this Wretch, touching the Truth or Falshood of what we say, and to deal with us both accordingly at the last Day of Judgment: And I dare also appeal to your Lordships to judge between us by what appears to you: For did you ever see greater Villainy, and Consciousness of Guilt in any Man's Countenance than in his?

By this Time, Mr. Moore being come in, I said, Moore, Apply yourself to my Lord Nottingham. I charge you, do not, for any Consideration of me, speak any Thing which you cannot justify for Truth.

Earl of N. Mr. Moore, Do you know that Person there? Pointing to Blackhead.

Mr. Moore. My Lord, I do know him so far, that I have seen him once or twice at my Lord's House at Bromley.

Earl of N. What Business had he at Bromley?

Mr. M. The first Time he brought a Letter to my Lord.

Earl of N. From whom?

Mr. M. My Lord, it was from a Country Minister in Buckinghamshire, a Doctor of Divinity, as he wrote himself; his Name was Hooke.

Bishop of R. My Lords, I now very well remember that was the Name, Hooke, or something very near it. There may be the Difference of a Letter: I will not stand upon that, or can it be expected I, or my Servant, should be positive as to every Letter of a Name, in so sudden a Question.

Earl of N. Mr. Moore, What was the Business of that Letter?

Mr. M. My Lord, it was concerning one that offered himself to be the Doctor's Curate, whom he suspected to have counterfeited my Lord's Letters of Orders. The Doctor desired my Lord to look into his Books, whether he had Ordain'd any such Person. My Lord and I did thereupon search all the Places where the Memorials of such Affairs are kept, and we found no such Name; and so my Lord himself wrote back to the Doctor, by this very Man that stands here.

Earl of N. Mr. Moore, Will you take your Oath of all this?

Mr. M. I am ready to take my Oath of it, if you please to give it me.

Earl of N. What say you, Blackhead? You see here is a young Man, the Bishop's Secretary, comes in by Chance, and confirms punctually what the Bishop had said before, concerning your Message to his Lord: And he offers to take his Oath of it. If you did bring a Letter from one Dr. Hooke, Why do you not confess it? It can do you no Hurt.

Blackhead. I know of no such Divine as Dr. Hooke; nor any thing concerning one that counterfeited the Bishop's Orders. The Letter I brought was from Mr. Young.

Mr. M. My Lord, this Fellow cannot but know, that what he says is shamefully false; I assure you, I have the Original Letter at Home to produce: And doubt not but divers of my Lord's Servants remember him, and his Business, as well as I do: For he was a second Time at Bromley, some Weeks after.

Earl of N. What was his Business then?

Mr. M. He said, he came to acquaint my Lord, that his Master, Dr. Hooke, had seized on the Person who had forg'd his Orders. My Lord ask'd him, Whether he had also seiz'd the False Instrument? And if he had, desired it might be transmitted to him. This Man answered, He believed his Master had got it: That he was coming up to London, and bringing the Cheat with him; and had been there sooner, had he not sprain'd, or hurt his Leg: But when he was come, the Doctor would give my Lord Notice, or himself wait upon him. My Lord was much pleased with this second Message, and gave Orders to have the Bringer of it well used. He was so; and freely discoursed with the Butler, and the other Servants, touching his Business there. So that I am verily persuaded several of them remember all these Circumstances of it, and perhaps more than I do.

Upon this, Blackhead being again urg'd by the Lords with so plain a Testimony, perfectly agreeing with what I had said, and he still persevering obstinately to deny every Part of it; I, and Mr. Moore were ordered to withdraw, Blackhead staying behind.

As I was going out, I said, My Lords, I cannot comprehend to what Purpose this Fellow persists in this Lye; I am sure he can never prove that I have injured the Government, in Word, or Deed, or Writing. Then I could not but again observe to the Lords, what visible Marks of Falshood and Treachery there were in Blackhead's Face: For, indeed all the while he look'd as if he would have sunk into the Ground; tho', as I was told afterwards, before I came into the Room, he had appear'd very brisk, and bold, and full of Talk. But, upon my first coming in, his Complexion, which was naturally very fallow, turn'd much paler and darker; and he was almost Speechless, saying nothing to any Purpose, more than what he thought was necessary to keep him from the main Lye, That he had brought me a Letter from one Young, and no other.

But after my being withdrawn about Half an Hour, I was called in again, and Blackhead sent forth.

Earl of N. Now, my Lord, the Business is out, the Fellow has confess'd he brought the Letter to you, written not in the Name of Young, but as from one Dr. Hookes; Hookes was the Name, not Hooke: Your Lordship was in the right, in saying, you would not stand upon a Letter.

Bishop of R. My Lords, I could not trust my Memory so far as to a Letter: But one Thing I was sure of, That was the only Letter this Rascal ever brought me; and it was not from any whose Name was Young.

Earl of N. Well, that Business is over, he has confess'd it; and now, my Lord, Pray take a Chair, and sit down.

Earl of Devon. Pray, my Lord, sit down.

Bishop of R. No, my Lords, I desire you to excuse me.

Earl of N. My Lord, we have some few Questions to ask you, and therefore pray repose your self.

Bishop of R. If you please to permit me, I had rather answer what your Lordships have farther to say, standing thus as I am at the Table.

Earl



*Earl of N.* Then, my Lord, we shall ask you : Have you ever written to the Earl of *Marlborough* within these three Months?

*Bishop of R.* I think I may safely affirm, I never writ to my Lord *Marlborough* in my Life : But I am certain, and upon the Faith of a Bishop, I declare, I have not written one Word to him these three Months.

*Earl of N.* Have you received any Letter from my Lord *Marlborough* within these three Months?

*Bishop of R.* I protest solemnly, I have not received any.

*Earl of N.* Have you received any written or printed Papers from my Lord of *Marlborough*, within that Space of Time?

*Bishop of R.* As in the Presence of God, I declare, I have not. My Lords, I have had some Acquaintance with my Lord *Marlborough*, both in King *James's* Court, and in the Parliaments since; but I cannot call to mind, that ever I wrote to him, or he to me.

*Earl of N.* Then, I think, my Lords, we have nothing more to do, but to wish my Lord Bishop a good Journey to *Bromley*.

With that they all rose up, and saluted me, testifying their great Satisfaction, that I had so well cleared my self, and confounded my Adversary. More especially Two Noble Lords of the Company, to whom, I said, I would now particularly appeal, gave me an ample Testimony of their Belief of my Innocency in this Accusation, and of my dutiful Disposition to the Government.

My Lord *Nottingham* then told me, in the Name of all the rest, *They had no further Trouble to give me.* I intreated them to suffer me to add a few Words : They permitting me, I said,

*My Lords,* I heartily thank you for confronting me with this Fellow; else I could not so well have made out my Innocency; but I might still have lain under a Suspicion, whereof I had not known the least Ground. Had this been a Trial for my Life, I should have been glad to have such Honourable Persons for my Judges. But now I have much more Reason to bless God, that you have been my Compurgators : That you are Witnesses, as well as Judges, of the Detection of this Villainy against me; whereof, I must acknowledge, as yet, I do not fathom the Bottom. Wherefore I must intreat, That I may put my self under your Protection for the future. For altho' this Fountain of Wickedness has been now stop'd in this Particular, as to my self, yet it seems to run under Ground still : And unless special Care be taken, it may break forth again in some other Place, on some other Occasion, to the Ruin, if not of me, yet of some other innocent Person.

*Earl of Devon.* No, my Lord : You need never fear, this Fountain can break forth any more, to do you, or any other good Man, any Prejudice; he having been so palpably convicted of Knavery and Lying.

*Bishop of R.* My Lords, I hope so : As for my self, I take my own Innocency to be abundantly vindicated, by this your general Declaration in my Favour. I make no question but your Lordships will next vindicate your selves, and the Justice of the Government, by bringing this wicked Man to condign Punishment, and by examining the main Drift of his Design, and who have been his Accomplices.

They all assuring me, I might rely upon them for it, I withdrew.

All this while I had not the least Conjecture, or Imagination, who this *Young* should be, with whom *Blackbeard* pretended I held so close a Correspondence.

But my next Appearance before the Committee of the Council, will clear up what remains of the whole wicked Mystery.

In the mean Time, returning Home that Evening to *Bromley*, I presently met with a plentiful Concurrence of Evidence from most of my Servants, of their Discourse with *Blackbeard*, and their Knowledge of his Business, in reference to Dr. *Hookes's* Letter.

First, The Butler, *Thomas Warren*, told me, That according to my Order to use him kindly, he had done so both Times he was with us : Particularly the second Time, he had entertain'd him with one of the Petty Canons of *Windsor*, who came thither by Chance, in the Parlour next the Garden : That thence he brought him down into the Cellar, where *Blackbeard* drank my Health with Knees almost bended to the Ground : That then he earnestly desir'd him to shew him my Study; saying, I have heard your Lord has a very good Study of Books : My Master *Hookes* has a very good one; he often lets me go into it, and I doubt not but you have the same Liberty : I pray let me see his Books. The Butler answer'd, My Lord has but few Books here, only such as he brings from Time to Time from *Westminster* for present Use, and they are lock'd up in Presses, so that I cannot shew them if I would. I pray then, said *Blackbeard*, let me see the Room, I hear it is a very fine one. The Butler said, He could not presume to do it without my Leave. Then, said *Blackbeard*, let me see the rest of the House. The Butler excus'd his not being able to do it then, because there were some Ladies with his Mistress. The same Request, he assur'd me, *Blackbeard* repeated almost twenty times; but still he deny'd him.

Then *Thomas Philips*, my Coachman, and *John Jewel*, my Gardner, confirm'd most of what the Butler had said; all of them agreeing, that both the Times he was at *Bromley*, especially the second, he had talked publickly with them of the Business he came about from his Master Dr. *Hookes*; enlarging much in Commendation of the said Doctor, what a worthy Man he was; what Hospitality he kept; and how he would never rest, till he had brought to Punishment the Knave that had forged my Hand and Seal for Orders. They added, That after I had dismiss'd him, he linger'd about in the Garden, the Hall, and the great Parlour, a long Time; and was full of such Discourses.

Moreover, the Gardner, and *William Hardy* the Groom, and *Thomas French*, and one or two of the other Servants, who remain'd at *Bromley* whilst I was in Custody at *Westminster*, did all assure me, that this Man, who brought first the Letter, and then the Message, from Dr. *Hookes*, had been a third Time at my House, whilst I was under Confinement. That it was upon a Sunday, which by Computation prov'd to be *Whitsunday*, May the 15th : That they found him in the midst of the House before they knew he was enter'd. He told them, That passing that Way, he came to condole for my Mishap, and to inquire what the Matter was; hoping it was not so



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so bad as was reported at London. They answer'd, They knew nothing of Particulars; yet doubted not but I was innocent. That he then again desir'd to see the House; but all the Doors were lock'd, except the great Parlour, which has no Lock upon it. That he would have enticed them to Town to drink with him; which they refused, but made him drink there; and he coming after Dinner, they perswaded a Maid-Servant to provide him some Meat; which she did, but unwillingly, telling them, *She did not like the Fellow's Looks*; that perhaps he might come to rob, or set the House, now so few Servants were at Home: That he rather looked, (as indeed he did,) like some knavish, broken Tradesman, than an honest, rich Clergyman's Bailiff, or Steward, (as he also call'd himself;) and it has proved since, that her Conjecture was true.

All this, and more, my Servants repeated to me, touching *Blackbeard's* Behaviour in my House, and his Discourse concerning his Master, Doctor *Hookes*; and they offer'd to depose it all upon Oath. And, above all, the next Day, being Saturday, June the 11th, Mr. *Moore* coming from London, immediately found the Original Letter that *Blackbeard* had brought me from the pretended Doctor.

Wherefore, being furnished with all these fresh Materials, especially with the Letter itself, and being not a little surprized to hear that the Rogue had, the second Time of his coming, been so earnest to get into my Study, or any of the other Rooms; and that he had the *Diabolical Malice* against me, to come to my House a third Time, on Pretence of condoling my Misfortune, which I then thought, it was probable, had chiefly proceeded from his malicious Perjury against me: All this consider'd, I resolv'd to go to London on Monday Morning with these Servants, and to carry the Letter that he brought me as from Dr. *Hookes*, to lay the whole Business before the Lords of the Committee, and to desire their farther Examination of *Blackbeard* upon these Particulars.

Accordingly, on Monday, June the 13th, I went, and attended the Meeting of the Lords that Morning in the usual Place. When there was a full Committee, I sent to them by a Clerk of the Council, intreating that I might have a short Audience. After some Time, I was introduced: There were present, (besides most of the Lords before-mentioned,) three others, whom I had not seen there since my first Appearance before them, the Marquis of *Carmarthen*, Lord President; the Lord *Godolphin*, and Sir *John Lowther*.

When I came into the Room, and was just going to propose the Business that brought me thither, my Lord *Nottingham* prevented me, and said,

My Lord, Do you know that Person there? Pointing to a Man, who stood behind the Privy Counsellors, near the Door which leads into the publick Room.

*Bishop of R.* My Lord, I do not know him.

*Earl of N.* My Lord, I pray observe him well.

*Bishop of R.* Upon my Credit, I never saw this Man before in my Life, to the utmost of my Knowledge.

Then the Person standing there, look'd boldly upon me, and said, Do you not know me, my Lord? Do not you remember, that I officiated some Weeks at *Bromley-College*, for Mr. *Dobson*, in King *James's* Time? And that I preached in the Parish Church there once or twice?

*Bishop of R.* My Lords, I solemnly affirm, I do not know this Man: I never saw him before: I never knew that he officiated in *Bromley-College*: I never heard him preach in the Church there: He is a meer Stranger to me: He may have serv'd for the Chaplain of that College in King *James's* Time: But I was not then concern'd who officiated there. He may have preach'd in the Church, and I not have heard him: For about that Time I was Clerk of the Closet, and was seldom or never at *Bromley* on Sundays, by reason of my Attendance on the Princess *Anne* of Denmark, either at *Whitehall*, or *Windsor*, or *Hampton-Court*, or *Richmond*.

The same Person presently took me up, with insolent Confidence, You will know me better when Captain *Lowe* appears: I warrant you don't know Captain *Lowe* neither.

*Bishop of R.* My Lords, if any of your Lordships please to ask me any Thing, I shall answer with all Respect. But I do not understand that I am bound to satisfy this saucy Fellow's Questions: Yet, because he has ask'd me so familiarly, touching my Acquaintance with one Captain *Lowe*, I assure you, I know not any such Man in the World as Captain *Lowe*.

But, my Lords, by this Person's Discourse, I am induced to believe, he may be the *Young*, with whom the other Knave *Blackbeard* pretended the last Time that I held a strict Correspondence by his Means.

*Earl of N.* This Man's Name is *Young*, *Robert Young*.

*Bishop of R.* Then, my Lords, because my Lord President, and some of the other Lords, were not here then, I must beg Leave of those that were, that I may repeat what I then remember'd, concerning one *Robert Young*. Whereupon I recollected the Substance of what I had said, of a Letter I had received some Years since, dated at *Newgate*, from one of the same Name, who pretended himself to be a Clergyman.

I added, It seems, my Lords, by his own Confession, this is the very same *Young*. But, as I never saw him before he was in *Newgate*, so I declare, upon the Faith of a Christian, I never saw or heard from him since that Letter: However, I am very glad you have him now: I make no doubt but he will be found, in the End, such another Villain as *Blackbeard* was proved to be on Friday last. \*

But,

\* *Stephen Blackbeard* was a Prisoner in *Newgate*, and convicted, Jan. 15, 1689. to stand in the Pillory, and to lose his Ears, and be imprisoned for a Year, for Forgery, but got his Sentence remitted.

*Young*, who also went by the Names of *Brown*, *Smith*, *Hutt*, *Jones*, *Green*, &c. in Dublin was call'd *Marsh*, and in *Raphee*, *Hopkins*, forg'd the Archbishop of *Cashell's*, the Bishop of *Waterford's*, and several Clergymen's Hands, to Testimonials of his Morals and Learning; whereby he got Deacon's Orders from the Bishop of *Killaloe*. He afterwards run away with a Horse from *Tallagh*; and at *Castle Reab*, fled for getting a Bastard; and at *Cavan*, was imprison'd for having two Wives, and there was degraded by the Bishop of *Kilmore*, fearing he might be hang'd in his Gown. Afterwards he came to England, and produced counterfeit Orders from the Bishop of *Clogher* to Archbishop *Sancroft*, begging Preferment, as a distress'd Irish Clergyman. After this, he sent a Woman, (whom he call'd his Wife) by the Name of *Mary Green*, to the King, at *Windsor*, pretending that her Husband was taken Captive by the Pirates of *Salles*, therefore pray'd the King would recommend her to the Clergy of England: This Petition being refer'd to the Archbishop, and the Bishop of London, she never came for an Answer to the Reference; but the forged



But, my Lords, said I, the Business that brought me to wait on you now, is to intreat you to take that same *Blackbead* into farther Examination, and to enquire a little more into his Part in this wicked Contrivance, whatever it is.

My Lords, since I went to *Bromley*, my Servant, Mr. *Moore*, has had the good Fortune to retrieve the very Original Letter that *Blackbead* brought me from his counterfeit Master, Doctor *Hookes*. Then I deliver'd the Letter at the Table, and my Lord *Nottingham* read it aloud. And to shew with what a treacherous Insinuation, and Plausibility of Style it was written, to draw from me an Answer under my own Hand, I here set down the very Letter itself, Word for Word.

MY LORD,

Being destitute of a Curate, one Mr. *James Curtis* came to me, who produced Letters Dimissory, (bearing Date, *March 13th*, 1691.) and likewise Letters of Orders under your Hand, and Episcopal Seal. Now, my Lord, willing I am to employ any that your Lordship shall recommend, and give him all the Encouragement imaginable; but being since, by his own Words, suspicious that his Instruments are forg'd, I have therefore on Purpose sent my Man to know the Truth thereof, and in order thereunto, I humbly beg your Lordship to give an Account in yours by this Bearer, promising, for the Church of *England's* Credit, and likewise your Lordship's Honour, that, if he be an Impostor, I will see him brought to condign Punishment for such his Forgery; but if he be not, I beg your Lordship's Pardon for this Trouble, occasion'd by my candid Affection for your Lordship, and all Clergymen, being not willing to have them impos'd upon.

I am your Lordship's

Most Obedient Servant,

*Robert Hookes, D. D.*

*Windsor,  
April 6, --922*

Now, my Lords, I thought it would be for your Service to acquaint you, That I have received, from divers of my Servants, a farther Account of all *Blackbead's* Demeanor, the first, second, and third Time he was at my House at *Bromley*; for he was there a third Time also, which I knew not of, before I went Home on Friday.

Then I summ'd up what has been said before, my Servants were ready to depose to that Purpose: Concluding thus, My Lords, my Servants are attending without; I pray that *Blackbead* may be brought before them Face to Face, and that they may be admitted to give in upon Oath, what they have to say concerning him.

Upon this, several of the Lords said, Send for *Blackbead*; and he was sent for.

But before he came, they call'd in Mrs. *Young*, the Wife, it seems, of the aforesaid *Robert Young*; but what a kind of Wife, and which of the two Wives he had at one and the same Time, will appear in what follows.

When she was come in, my Lord *Nottingham* said to her, *Mary Young*, Whence received you this Paper? Taking up a Paper that lay upon the Table.

*Mary Young*. I had it from Captain *Lawe*.

*Earl of N.* What did he say, when he gave it you?

*Mrs. Young*. He bid me deliver it to my Husband.

*Earl of N.* What did he say it was?

*Mrs. Young*. He said it was a *Sociate*, or some such Word.

*Earl of N.* What! Did he deliver you a Paper of this treasonable Nature, in the Manner as it is, to be given to your Husband, without sealing it up, or enclosing it in another Paper?

*Mrs. Young*. Yes, my Lord, he did.

*Earl of N.* Did he tell you any of the Names to it?

*Mrs. Young*. Yes; he said, there were the late Archbishop of *Canterbury's*, the Bishop of *Rochester's*, and some other Lords Names to it.

*Earl of N.* What pass'd afterwards between you about it?

*Mrs. Young*. I gave it my Husband, and when Captain *Lawe* came for it again, my Husband said, No, these Lords, whose Names are subscribed, have not been so liberal in their Relief of my Wants as formerly; and therefore I will make another Use of this Paper: And so lock'd it up.

By this Time *Blackbead* was brought in, and the Woman order'd to withdraw, and to be kept by herself.

*Earl of N.* *Blackbead*, the last Time you confess'd you brought the Bishop of *Rochester* a Letter from *Robert Young*, under the false Name of Doctor *Hookes*.

*Blackbead*. Yes, I did.

*Earl of N.* Can you know that Letter when you see it?

*Blackbead*. I cannot tell; I doubt I cannot know it.

*Earl of N.* Here it is; (and it was given into his Hand;) Is that the same Letter you deliver'd the Bishop?

*Blackbead*. I am not sure it is.

*Earl of N.* Consider it well; look on the Superscription, you cannot but remember that. You began to be somewhat ingenuous last Friday; if you relapse, it will fare the worse with you.

*Blackbead*. Yes, this may be the Letter; this is the very same Letter.

*Earl of N.* And you received an Answer to this from the Bishop for Doctor *Hookes*, which you carried to *Robert Young*?

*Blackbead*. Yes, I did, I own it.

*Earl of N.* But, What made you, when you were at *Bromley* the second Time, so earnestly to desire of the Bishop's Butler, and his other Servants, that you might see the Rooms in the House, especially his Study?

*Blackbead*. No, I do not remember that I desired to see the Study: The House I might, out of Curiosity.

forged the two Bishops Hands, and went about the Country, cheating the King's Subjects, but being detected at *Bury*, in *Suffolk*, he and she were committed to Goal, try'd and found guilty, and sentenc'd to stand in the Pillory at *Bury*, *October 6*, 1684, where he lay in Goal about a Year, having no Money to pay his Fees. Afterwards he went and committed many Villainies at *St. Alban's*, and other Places; and about 1688, was committed to *Newgate*, and afterwards tried, convicted, and Fined, for forging Bills of Exchange, and cheating People, &c. And laying in *Newgate* some time, he there contrived the Association, &c. against the Bishop, &c. The Lives of these two infamous Persons, with the Records of their Convictions, the forged Testimonials, forged Bills, &c. of *Young's*, are to be seen at large in the Bishop's Account of the two Authors of this Forgery. Printed in Quarto, 1693, which he called, *The Second Part of the wicked Contrivance of Blackbead and Young*.



*Earl of N.* But here are some of the Bishop's Servants without, who are ready to swear, that you press'd very often to get a Sight of his Study; saying, you had the Freedom at your Master *Hookes*, to shew any Stranger his Books, and you doubted not but the Butler could do the same there.

*Blackbead.* I cannot deny that I did desire to see the Bishop's Study: The other Rooms I am sure I did.

*Earl of N.* What Reason had you to be so importunate to see that, or any of the other Rooms? Had you any Paper about you, that you design'd to drop, or leave in any Part of the Bishop's House?

Here *Blackbead* stopp'd, as very loath to out with it; 'till divers of the Lords urg'd him to tell the Truth. At last he went on, though with much Hesitancy.

*Blackbead.* Yes, I must confess I had a Paper in my Pocket, which I design'd to put somewhere in the House.

*Earl of N.* What did you with it?

*Blackbead.* I did leave it in the Parlour next the Kitchen.

*Earl of N.* In what Part of the Parlour?

*Blackbead.* In the Flower-Pot in the Chimney.

Good Lord blefs me, cry'd I, I seriously protest, I never heard that any Paper was found there by my Servants. To be sure they would have brought it me.

*Earl of N.* But, my Lord, it will be worth your while to send presently to *Bromley*, to see whether there be any Paper still, and what it is.

*Bishop of R.* My Lord, I will send one away immediately. Only my Servants are without, expecting to be sworn. Be pleas'd first to call them in, and dispatch them.

*Earl of N.* Nay, my Lord, there is no need of their Testimony now. For this Fellow has said already more than they know. He has confess'd, not only that he desired to see your House, and particularly your Study, but that he did it with Intention to leave a Paper somewhere in it; and that he did leave one in your Parlour, and in the Flower-Pot of the Chimney.

*Bishop of R.* Then, my Lord, I will send away forthwith.

*Earl of N.* Stay, my Lord, let us first examine him a little farther. *Blackbead*, What Paper was it you left in the Bishop's Chimney in the Flower-Pot?

*Blackbead.* It was the Association.

*Earl of N.* Was it this Paper here? Shewing the Association that lay upon the Table.

*Blackbead.* Yes, it was.

*Earl of N.* How came you by it? And who advis'd you to lodge it there?

*Blackbead.* I had it from Mr. *Young*, and he advis'd me to leave it in the Bishop's House, as I did.

*Earl of N.* Did *Young* direct you to put it into the Flower-Pot in the Parlour?

*Blackbead.* Yes, he did, and I put it there accordingly in the Flower-Pot.

*Earl of N.* But were not you a third Time at the Bishop's House? It was upon a Sunday, which it seems was *Whitsunday*.

*Blackbead.* I was.

*Earl of N.* You pretended to condole for the Bishop's Imprisonment: It is manifest that could not be your Business. What was it?

*Blackbead.* I was desired by Mr. *Young*, seeing the Association was not found by those, who apprehended the Bishop, to go to *Bromley*, and try to recover it, that being the Original. I did so; I came into the House before any of the Servants were aware, I went into the Parlour unseen, and took the Paper out of the same Place where I had put it, and deliver'd it again to Mr. *Young*.

*Bishop of R.* My Lords, I am very much surprized at all this. I cannot but admire the wonderful Goodness of God; in this my extraordinary Deliverance. It appears by what this Fellow confesses, that this forged Association was in my House, in a Flower-Pot, for many Days together: And that it was there at the very Time I was seized on by your Lordships Order. For he says he put it there the second Time he was at *Bromley*, which was a pretty while before I was in Hold; and took it not out 'till the third Time, which was upon *Whitsunday*, the Ninth Day after I was under Confinement. And by a strange and marvellous Providence, that Parlour, where he says it lay so long in the Chimney, was never search'd or enquired after by the Clerk of the Council, or the Messenger.

The other Part of the House, on the Left-Hand of the Hall, where my Study is, and Bed-Chamber above Stairs, and a Parlour and Drawing-Room below; all these they searched very accurately. Particularly, I well remember the Messenger thrust his Hand into the Flower-Pots in every Chimney: Which seem'd very odd to me then: But I now understand the Meaning of it.

At this, my Lord *Sydney*, my Lord *Nottingham*, my Lord *Devonshire*, and some others of the Council, affirm'd, That they perfectly remember'd, both *Blackbead*, and *Young*, did especially direct them to give Order to those who should be sent to take me, to search all the Flower-Pots.

By this Time, it was thought seasonable by the Lords, to confront *Blackbead* with *Young*.

But in the mean while, the Counterfeit Association being handed about the Table, was, at length, deliver'd to me. It was to this Purpose, as much of it as, by a transient View, I could carry away in my Memory.

THAT we whose Names were subscribed, should solemnly promise in the Presence of God, to contribute our utmost Assistance towards King *James's* Recovery of his Kingdoms. That to this End, we should have ready to meet him at his Landing, Thirty Thousand Men well arm'd. That we should seize upon the Person of the Princess of *Orange*, dead or alive; and take Care that some strong Garrison should be forthwith deliver'd into his Hands: And furnish him with a considerable Sum of Money for the Support of his Army; or to this Sense.

March 20, ——— 92.

And the forged Subscriptions were, as I remember, after this Manner:

<i>Marleborough.</i>	<i>Salisbury.</i>	<i>W. Cant.</i>
		<i>Tho. Roffen.</i>
		<i>Cornbury.</i>
<i>Basil Firebrace.</i>		<i>John Wilcox.</i>

Now upon the first Sight of this Paper, I presently said, I protest, my Lords, I am very much amazed to see my Hand so well counterfeited.

All

All the Difference is, they have done me the Favour to write it finer than I can. Otherwise, I acknowledge it is so like, that I verily believe, I myself, had I seen it in another Place, should have been apt to doubt whether it were of my Writing or no. I am confident it might, upon the first Blush, deceive the best Friends I have.

But, my Lords, here is another innocent Person's Name, whose Hand I know very well. And I dare venture to say, it is even better forg'd than mine. I mean Archbishop *Sancroft's*.

*Lord Godolphin*. My Lords, I am very well acquainted with Archbishop *Sancroft's* Hand. And really it is here most exactly counterfeited.

Moreover, my Lord *Godolphin*, my Lord *Sydney*, and others said, That the Earl of *Marlbrough's* Hand had been so well feign'd in a Letter pretended to be written to *Young* himself, that it was very difficult for his most intimate Friends to observe any Distinction. And in that Letter the Bishop of *Rochester* was said to have the Paper in his keeping, which appears now to have been meant of the false Association's being in my Custody.

Nay, my Lord *Sydney* assur'd me, these very Impostors had brought him a Letter, supposed also to be written by me to *Young*, which being but of ordinary Matters, he thought not worth the keeping, but he well remember'd the Subscription of my Name was very like this in the Association, as well indeed it might.

By this Time, *Young* being come into the Room, my Lord *Nottingham* spoke to him; *Young*, look upon that Letter, (shewing him his own to me, under the Name of Doctor *Hookes*,) Do you know that Hand?

*Young*. No, I don't know it.

*Earl of N.* Did not you send that Letter to the Bishop of *Rochester* by *Blackbead*?

*Young*. No; I know no *Hookes*. I never writ to the Bishop of *Rochester*, but in my own Name, with my own Hand.

*Earl of N.* What say you, *Blackbead*?

*Blackbead*. I did receive that very Letter from Mr. *Young's* own Hand, and deliver'd it to the Bishop of *Rochester* with mine.

*Earl of N.* (Taking up the Association, and shewing it to *Young*.) Did not you give this Paper to *Blackbead*, and order him to put it into a Chimney in the Bishop of *Rochester's* House, and into a Flower-Pot, if there were any?

*Young*. No, I never desired him to carry it thither, or to put it into a Flower-Pot.

*Earl of N.* What say you, *Blackbead*?

*Blackbead*. Mr. *Young* did give me that Paper, and directed me to leave it in the Bishop's House; and, if I could, to put it in a Flower-Pot in some Room; which I did, in the Parlour.

*Young*. There is no such Matter, I absolutely deny it.

Upon this, the Earl of *Nottingham*, the Lord *Sydney*, and some others of the Counsellors, ask'd *Young*, Why then did you give us such express Directions, to send, and search the Flower-Pots, among other Places in the Bishop's House?

*Young*. I said nothing of Flower-Pots. I bid you take Care that the Bishop's Person should be exactly search'd; because, when he went abroad, he carried the Association about him; when he was at home, he put it in some private Place, for Fear of Surprize: Perhaps I might say in the Chimney.

The Lords replied, Nay, we all well remember, you particularly mention'd the Flower-Pots.

*Earl of N.* *Young*, When you perceived that the Persons sent to seize on the Bishop had mis'd the Association, did not you then desire *Blackbead* to go a third Time to the Bishop's House, and to take it out of the Pot, where he had laid it?

*Young*. No, I know nothing of it.

*Earl of N.* What say you, *Blackbead*?

*Blackbead*. At Mr. *Young's* Request, I went to the Bishop's House a third Time; it was upon a Sunday; I privately got into the Parlour, and took the Association out of the same Flower-Pot where I had laid it; and return'd it back to Mr. *Young*.

*Young*. This is a Combination between the Bishop of *Rochester* and *Blackbead*, to baffle the whole Discovery of the Plot.

Which Saying of *Young's* could not but raise a general Smile among all the Company, they lifting up their Hands with great Indignation at his unparallel'd Impudence.

*Bishop of R.* I thought, my Lords, the last Time I was here, *Blackbead* was the most brazen-faced Fellow that ever I saw; but now I find this same *Young* to be a much viler Miscreant than he. This is so base a Suggestion against me, and so impossible for me to be guilty of, and I know your Lordships so little suspect it of me, that I need not make any Answer to it in my Defence.

*Lord President.* *Young*, Thou art the strangest Creature that ever I heard of: Dost thou think we could imagine, that the Bishop of *Rochester* would combine with this thy Confederate, to have an Association written, with his own Hand to it, and then laid in his own House, in a Flower-Pot there? Which, if it had been found, must have endanger'd his Life: And we see it was the most remarkable good Fortune to him that almost ever happen'd to any Man, that it was not found there.

But *Young* still persisting, that he believed I had taken *Blackbead* off, they were both order'd to withdraw. And, I assure my Reader, that during this whole Examination, tho' *Young's* Forgery was so evidently convicted by the Confession of his own Companion, and Instrument; yet he behaved himself with a daring unconcern'd Confidence, with a bold and erect Countenance, though it had naturally very much of a Villain in it. His whole Carriage indeed was such, as became the Discipline he has undergone for these divers Years; having so long been almost a constant Inhabitant, together with his Wife, of many of the common Goals in England and Ireland.\*

Then

\* "I crave Liberty to remind you what *Young* the Parson, in Conjunction with *Blackbead*, had contrived, in order to the murdering several of the First Quality in the Kingdom, besides divers Gentlemen of lower Degree; for these Fellows judging it too little and mean for Persons of their Transcendancy in Villainy, meeterly to swear that such and such had conspired and combined to restore, and re-establish King *James*, they had the audacious and the unprecedented Impudence to forge an Association, and to counterfeit and affix the Hands and Names of Honourable Peers, and worthy Persons unto it; importing, their having mutually and jointly undertook to dispossess King *William*; and to bring back and re-advance King *James*. And though it was morally impossible, as well as altogether incredible, that had there been such a Design, and so concerted and stipulated, Wretches of the Meanness of *Young* and *Blackbead*, should have been admitted upon a Secret of such Importance in itself, and whereof the Discovery would have rendered those concerned, liable to the Loss of Life, Honour, and Estates: Yet not only with what Ease, but Lethery, was the Belief of it entertained, by divers of our Su-



Then the Lord President call'd for the Letter which *Young* had sent to me under the Name of *Hookes*. When his Lordship had view'd it deliberately, he ask'd also for the *Association*, and having compared them for some considerable Time, he broke forth in these Words; Really, my Lords, it is a very great Providence, that this Letter, sent by *Young*, under the Name of *Hookes*, to the Bishop of *Rochester*, was preserv'd by his Servant: For this very Letter, and the *Association*, were both apparently written by the same Hand; you may perceive there is no manner of Difference in the Writing, but only that the Letter is written in a less Hand, as Letters are wont to be, and the *Association* in a greater, as a publick Instrument.

At this the whole Board, one after another, had a perfect Sight of both, and all applauded the Happiness of the Discovery: For it was as clear as Light to all that were present, that the Letters, and Words, of both, were of the very same Form and Figure.

Particularly, my Lord *Godolphin* farther observ'd, and made it plain to them all, that the *W* in *W. Cant.* in the Subscription, was the very same Letter with the *W* in *Whereas*, which was the first Word of the Counterfeit *Association*.

For my Part, I could not forbear exclaiming, Great is Truth, and it will prevail!

After all this, I asking the Lords, Whether they had any farther Service to command me? And they saying, No, I spoke these few Words.

My Lords, I must always acknowledge, that, next the Signal Providence of God, in so visibly protecting an innocent Man, your Lordships fair

and honourable Way of proceeding with me, in not shutting me up close in the *Tower* immediately upon my first Accusation; but in openly confronting me with these Varlets, whilst the Matter was fresh in my Memory; and in so strictly and impartially examining them now, has been the principal Occasion, that my Innocency has met with a Vindication as publick and unquestionable, as I myself could have wish'd and pray'd for: But still, my good Lords, I do again most humbly recommend to your Lordships, the Prosecution of this Black Contrivance to the Bottom, for the Sake of Truth and Justice, and for the Safety of every other honest Man, whose Lot this might have been as well as mine. I am sure your Lordships all believe, that there can be no greater Service to the Government, especially at this Time, than to have such perjured Informers, so plainly discovered, to be severely punished according to their Demerits.

And so I took my Leave of their Lordships.

*Blackbeard* and *Young* were afterwards tried and convicted for this Forgery; and in the Year 1700, *Young* was executed at *Tyburn* for Coining, and at the Gallows deliver'd the following Speech to the Reverend Mr. *Allen*, the Ordinary.

*A true Copy of the Paper deliver'd by Robert Young, to the Reverend Mr. Allen, Ordinary, at Tyburn, on the 19th of April, 1700.*

*Publish'd by Permission of Authority.*

I Cannot but be very sensible, how justly I have provoked a most merciful and just God to Anger, by manifold Offences I have committed, and

"preme and reputed Wise Ministers; and notwithstanding its being in the whole Matter of it, more Ludicrous than Farce, or *Bartholomew-Fair-Shew*, than to be entertained by Statesmen, yet with what Seriousness and Gravity was it brought to the Council-Board, and received there as a Subject worthy of weighty and solemn Debate. See a Letter to the Right Honourable Sir *John Holt*, Knight, Lord Chief Justice of the King's Bench, occasioned by the Noise of a Plot. The Second Edition, 1694, Page 10.

And in the same Letter, Page 11 and 12. *The Author says*, Nor could the Ministers be so great Strangers to the infamous Characters of the Witnesses, (whose many and notorious Crimes had sufficiently published them before through the whole Nation as Rascals, who had forfeited all Right to be believed and credited,) as to hope to have their Integrity and Righteousness justified in seizing and prosecuting any upon their Testimony: And yet had it not been for the missing of the forged Paper, when it was at first so narrowly searched for at the Bishop of *Rochester's*, where one of the Rogues traitorously and feloniously lodged it, it is scarce to be conceived, how some of our Statesmen were prepared to have pushed on that Affair to the Imprisonment of several. But that Misadventure, together with the Defences which the aforesaid eloquent Bishop, after his Apprehension, made at his being examined before the Council, rendered them more slow and wary in their Proceeding: And thereupon, through the gaining the Respite of a little Time, there was an Opportunity obtained, not only of discovering and laying open the many infamous and horrid Crimes, whereof the Rogues had at other times been guilty, but of fully detecting the Forgery of the *Association*, and where they had secretly laid it in the Bishop's House, in order to have destroyed him and others, in Case it had been found by the Clerk of the Council and the Messengers, when it was so industriously sought for. And truly, my Lord, had not *Young* laboured under a strange Defect of Morals, he was incomparably qualified in all other Respects, to have been a select, singular, and standing Witness for the State: For as he has a Sufficiency of Wit, and Presence of Mind, to be able to give Things the best Gloss, and readiest Turn of Thought, so he is furnished with a larger Stock of Impudence and Assurance than most Men in the World are: Of which your Lordship was an astonished Witness when you had him before you at the Bar, to be tried for the Forgery which I have mentioned, and to be condemned to the too gentle and feeble Punishment which the Law hath ordained for it. For with what Confidence did he stand, not only under the Load of a Thousand infamous Actions, of which all the Court knew him to have been guilty, but under the fullest and clearest Proof of the malicious Forgery, for which he was then Arraigned? Yea, with what Effrontery, and Air of Impudence, to the Amazement of all there, did he continue to assert his own Innocence, and persevere in his Crimination of others? But that which fill'd Men most with Sorrow, in Reference to that Transaction, and which keeps them under disquieting Fears ever since, is, that though *Young* and *Blackbeard* were Instruments in it, yet People of another Figure must have been the first Contrivers and Authors of it: And the handing Money to *Blackbeard*, while kept in Custody by *Allen* the Messenger, and conniving at his Escape from thence, gives us more than a Suspicion of it, and little less than a moral Certainty: For that Rogue having been the Tool employed too with *Young*, by the superior Managers, and having threatened to squeak in Case given up and abandoned to a publick Punishment, it was so ordered, that he might not only be permitted to get away, but be sheltered and maintained in *Ireland*, whither he withdrew, and from whence the Government might have easily brought him back, were there not a Mystery in that Affair, which it is not for some People's Honour to have unravell'd. Nor was the Messenger, out of whose House and Custody he made his Escape, ever punished for his Carelessness and Neglect; but after a little Menacing and Reprimand, which was meer Grimace, he hath been treated all along since with more distinguishing Favourites than fell to the Share of his Fellow-Officers. Neither durst so mean and creeping Wretches as *Young* and *Blackbeard*, (how impudent and malicious soever they are) have attacked Persons of the Earl of *Marlborough*, and the Bishop of *Rochester's* Rank and Quality, and who had merited so well of the Government, and were believed at that Time to stand in all Terms of Fairness with it, had they not been prompted, guided, and encouraged to it, by Persons of Authority, Grandeur and Eminency. And had the Villains acted merely under their own Conduct, and by the Influence of Personal Malice and Avarice, they would have singled out such to be accused, as are held Indiscreet, Talkative and Rash, and with whom it might have been likely for them to have had some Conversation; and not Persons of the greatest Prudence, Circumspection and Reservedness of any in the Kingdom, and into whose Society it was morally impossible that any should judge them to have been admitted, nor so much as into their Presence, unless as Beggars, and indigent Supplicants. So that this Conspiracy, by suborning two infamous Rascals, and of obtaining thereby Credit to a Plot, upon the Belief of which, several Noble, Reverend, and Worthy Persons, were to have been involved under Guilt of Ruin, may serve to instruct your Lordship not to be hasty and forward in giving Credit to the present importunate and noisy Clamours, and to make you extremely wary how you proceed to the Conviction and Condemnation of those that are accused and threatened to be arraigned.



and therefore, for the necessary Discouragement of others, who shall endeavour to tread in my Steps, and parallel my Forgeries; I conceived a Duty incumbent on me, to leave to the World a true and faithful Narrative of my prevaricating Steps: But the shortness of Time allotted me, being not sufficient to furnish such a Work in, I will mention only these few Passages of my Life.

And First, I think myself especially obliged to discover to the Publick, how far I was concern'd in that pretended Plot, supposed to be carried on by the Earls of *Marlborough* and *Salisbury*, the Lord Bishop of *Rochester*, and some others; the Truth of which, I call God to witness, is as follows: I was committed to *Newgate*, 'till I discharged a certain Fine imposed on me; during my Confinement, one *Henry Pearson*, a Surgeon, I think, was committed to the same Place for Debt, he perceiving me to be very expert in counterfeiting Hands, told me, that if I could contrive a sham Plot, and Father it upon those Noble Peers, I might soon have Money enough to pay my Fine: Being in very low Circumstances, I readily consented to this Proposal, but told him, nothing could be done in that Matter 'till he was released, which in a short Time was effected. As soon as he was at Liberty, he employ'd one *Blackbead* to carry Letters between us. I happen'd by a certain Stratagem, to see the Earl of *Marlborough's* Hand; this I counterfeited so cunningly, that it was very difficult to discern the true from the false; then I drew up an Association, and affix'd to it the Hands of the Earls of *Marlborough* and *Salisbury*, as also *Sir Basil Firebrass's*; the Lord Bishop of *Rochester's*, and the Lord *Cornbury's* was wrote by another Hand, according to my Request. And that the more Credit might be given to this pretended Plot, I wrote several Letters in the Name of the Lord *Marlborough*, (for I was perfectly acquainted with his way of Writing) supposed to be directed to me, which *Blackbead* used to bring me again; and yet he swore before the Lords of the Council, that the said Earl sent them to me, whereas, to his Knowledge, I myself forged them, and order'd them to be sent after that Manner. This is the Truth of that Business, which has made so great a Noise in the World; and humbly beg the Pardon of those Noble Peers, and do declare once more, in the Presence of God, that I did not set the Lord Bishop of *Rochester's*, or the Lord *Cornbury's* Hand to the said Paper, yet it was done by my Consent, by another Person. And whereas I am accused with writing several threatening Letters to the said Lord Bishop, if he did not leave a Hundred Pounds in a certain Place; I declare, as I am dying Man, I was not concern'd in it. As for this Crime of Coining, for which I die,

I declare before God, I am no otherwise guilty, than by being a Spectator.

But tho' I am not guilty of this Fact, yet I must lay my Hand upon my Mouth, and confess that the Lord is righteous, and his Judgments upright, for I have injured my Neighbour so often by Forgeries, Cheats, &c. that I think it scarce possible to recount them. But that I may not totally omit them neither: In the Year 1695, I removed myself, by *Habeas Corpus*, from the *King's Bench* to the *Fleet*, where I came acquainted with Mr. *Hunter*, now living in *Billiter-Lane*, Mr. *George Alliver*, alias *Block*, Mr. *Dawson*, Mr. *Greenfield*, Mr. *Coin*, and others whom I have forgot. In the End, we concluded to cheat one Mr. *Thomas Lasenby*, of *Leeds* in *Yorkshire*, out of Cloth, to the Value of 135*l.* which accordingly was effected, and the Cloth deliver'd at the *Bear-Inn* in *Basinghall-street*. In the Year 97, I was, by the Warden of the *Fleet*, removed back again to the *King's Bench*, where I came acquainted with Mr. *John Carey*, *George Benson*, and *James Roberts*, and by false Bills of Exchange, and forged Letters, endeavour'd to cheat Mr. *Seth Loftbouse*, a Goldsmith in *Fleet-Street*, and Mr. *Peter Block Machiels*, a Merchant in *Amsterdam*, out of 1600*l.* but that fail'd, tho' *Carey* was pillory'd for it. In the aforesaid Year 97, I came acquainted likewise with one Mr. *John Griffin*, of *Tuttle-Street*, *Westminster*, and by forged Leaves, as under one Dr. *Thomas Lamplugh's* Hand, I have cheated Men in Town out of several Hundred Pounds by way of Mortgages. *Sir John Johnson*, an Alderman and Goldsmith in *Cheapside*, since deceased, very narrowly escaped of being cheated out of 200*l.* by Virtue of one of the aforementioned Leaves.

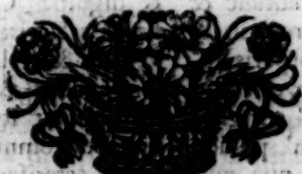
In the Year 98, the aforesaid Persons, and I, cheated Mr. *Azariab Reynolds*, an Undertaker in *Cheapside*, of a Velvet Pall, two Cloaks, &c. by a forged Letter, as from his Correspondent in the Country, for which I was committed to *Newgate*, and fined 200 Marks at *Guildhall*, where I received my Trial, and was convicted.

In *Newgate*, I came acquainted with *Jones*, the Evidence, whom I saw coin in the Debtor's Hall, several Sums of Money. How far I was concern'd with him, I have already observed; but I forgive them, and do humbly beg God, and the Persons I have wrong'd, to forgive me those wicked Actions I have committed. Into thy Hands, O God! I commend my Spirit! Lord Jesus, receive the Soul of the unhappy and miserable

Robert Young.

This is a true Copy,  
Dated April 20,  
1700.

John Allen, Ordinary.





XLVI. *Proceedings against* CHARLES KNOWLES, *Esq*; (*commonly call'd Earl of Banbury,*) *for the Murder of* PHILIP LAWSON, *Gent.* \* 4 & 5 Will. & Mariæ, 1692-3.

*The* INDICTMENT.

Rex *versus* Knowles, *alias* Com' Banbury.

Hill. 4 & 5 W. & M.

Indict-  
ment for  
Murder a-  
gainst the  
E. of Ban-  
bury, by the  
Name of  
Charles  
Knowles,  
Esq; found  
at Hicks's  
Hall in  
Middlesex,  
and re-  
mov'd by  
Certiorari  
into the  
King's  
Bench,  
where the  
Defendant  
being ar-  
raigned  
thereon, he  
pleads Mis-  
nomer in  
Abatement  
of the In-  
dictment,  
viz. that he  
is Earl of  
Banbury,  
and sets out  
the King's  
Letters Pa-  
tent to his  
Ancestors,  
and the De-  
scents to  
himself.  
The Attor-  
ney Gene-  
ral replies,  
That the  
Defendant  
petitioned  
the House  
of Lords to  
be tried on  
this Indict-  
ment, and  
that there-  
upon it was  
adjudged,  
that he had  
no Right  
to the said  
Earldom.  
To this Re-  
plication  
the Defen-  
dant de-  
murs, and  
the Attor-  
ney Gene-  
ral joins in  
Demurrer.

Midd' ff. **A** Lias scilt' die Mercur' scilt' 7 die Septembris Anno Regni Domini & Domine nostror' Guliel' & Mariæ Dei Gra' Angl' &c. Regis & Regine fidei defensor' &c. quarto ad general' session' pacis Domini Regis & Domine Regine tent' p' adjournment' p' Com' Midd' apud Hicks's Hall in St. John-Street in Com' pred' coram Carolo Lee Mil' Lanceloto Johnson & al' fociis suis justic' dictor' Domini Regis & Domine Regine ad pacem in Com' pred' conservand' necnon ad diversas felon' transgr' & al' malefacta in eodem Com' p'petrat' audiend' & terminand' assign' per sacrum duodecim jur' probor' & legalium hom' Com' pred' ad tunc & ibid' jurat' & onerat' ad inquirend' p' dictis Domino Rege & Domina Regina & corpore Com' predict' presentat' existit quod Carolus Knowles, nup' de paroch' Sancti Egidii in Campis in Com' Midd' Ar' Deum pre oculis suis non habens sed instigatione diabolica mot' & seduct' 6 Decembris Anno Regni Domini & Domine nostror' Guliel' & Mariæ Dei Gra' Angl' &c. Regis & Regine fidei defensor', &c. 4 vi & armis, &c. apud paroch' pred' in Com' pred' in & sup' quandam Philippum Lawson gen' in pace Dei & dict' Dom' Regis & Domine Regine nunc ad tunc & ibidem existen' felonice voluntarie & ex malitia sua precogitat' insult' fecit Et quod pred' Carolus Knowles cum quodam gladio Anglice a Sword, de ferro & chalybe confect' valor' quinq; solid' quem ipse idem C. K. in manu sua dextra ad tunc & ibid' extract' habuit & tenuit p'fat' Philippum Lawson in & sup' sinistram partem corporis ipsius P. ad tunc & ibidem felonice voluntarie & ex malitia sua precogitata p'cussit & pupugit dans eidem P. L. ad tunc & ibidem cum gladio extract' pred' in & sup' p'd' sinistram partem corporis ipsius Philippi L. prope dict' breves costas ipsius P. un' vulnus mortal' Anglice *one mortal Wound* latitud' un' pollicis & profunditat' sex polliciu' de quo quidam vulnere mortal' p'd' P. L. ad tunc & ibidem instant' obiit. Et sic jur' p'd' dicunt sup' sacrum suum quod p'd' C. K.

p'fat' P. L. modo & forma p'd' ad tunc & ibidem felonice voluntarie & ex malitia sua p'cogitat' interfecit & murtheravit contra pacem dictor' Domini Regis & Domine Regine nunc Coron' & dignitat' suas, &c. Quod quidem Indictament' Dominus Rex & Domina Regina nunc coram eis postea certis de causis venir' fecer' terminand' &c. p' quod p'cept' fuit Vic' Com' p'd' quod non omitt' &c. quin caperet eu' si, &c. ad respond', &c. Et modo scilt' die Martis prox' post Octab' Sci' Hillar' isto eodem termino coram Domino Rege & Domina Regina apud Westm' ven' Carolus Comes Banbury sub custod' Will' Richardson gen' custod' Gaol' Dominor' Regis & Regine de Newgate virtute brevis Dominor' Regis & Regine de habend' corpus ad subjiciend' &c. ei inde direct' in cujus custod' p'antea ex causa p'd' p' nomen Caroli Comitis Banbury al' dict' Caroli Knowles Ar' comiss' fuit ad barr' hic Placitum. duct' in propria persona sua. Et statim de p'miss' ei superius imposit' alloquutus qualiter se velit inde acquietari dicit quod ipse est persona in Indictament' p'd' mentionat' & intens' per nomen Caroli Knowles de paroch' Sancti Egidii in Campis in Com' Midd' Ar' & versus quem Indictament' p'd' p'lat' existit p' feloniam & murthero predict' Et dicit quod ipse ad Indictament' ill' respondere compelli non debet quia dicit quod Dominus Carolus Primus nup' Rex Angl' &c. p' literas suas Patentes sub magn' Sigillo suo Angl' geren' dat' apud Canbury 18 die Augusti Anno Reg' sui Secundo quas quidem literas Paten' sub magno Sigillo ejusdem nup' Regis Angl' sigillat' p'd' C. comes B. hic in Cur' p'fert' de gra' sua speciali & ex certa scient' & mero motu suis Will' ad tunc Vic' Wallingford ad statum gradu' dignitat' & honorem Comitis Banbury crexit p'fecit & creavit eidem Will' nomen statum styli dignitat' titulu' & honorem Comitis Banbury imposuit dedit & prebuit p' easdem literas Paten' Ac ipsum Will' eodem nomine stat' titulo stylo honor' & dignitat' Comitis per gladii cincturam Cape honoris & circuli aurei impositionem insignivit investivit & realit' nobilitavit p' easdem literas paten' habend' & tenend' eadem nomen statum gradu' dignitat' styli titulu' & honorem Comitis Banbury cum omnibus & singulis preheminentiis honoribus ceterisq; hujusmodi nomini statui gradui dignitat' stylo titulo & honori Comitis p'tinen' sive spectan' p'fat' Williel' & heredibus masculis de corpore suo exeun' imp'petuum volen' &

per easdem litteras paten' conceden' p' se hered' & successoribus suis quod p'fat' Willielmus & hered' sui masculi pred' nomen statum gradu' titulu' & honorem pred' successive gererent & haberent & eorum quilibet gereret & haberet & per nomen Comit' Banbury successive vocarentur & eorum quilibet vocaretur prout per easdem litteras paten' plenius apparet virtute quarum quidem litterar' paten' pred' Willielmus fuit Comes Banbury & seit' de statu gradu titulo & honore Comit' Banbury in dominico suo ut de feodo talliat' videlt' sibi & hered' mascul' de corpore suo exeun' Et sic inde seit' existen' idem Willielmus Comes Banbury obiit sic inde seit' scilt' apud p'd' paroch' Sancti Egidii in Campis in Com' Midd' p'd' post cujus mortem status gradus titulus & honor Comit' Banbury p'd' descendebat Edwardo Knollis ut fil' & hered' mascul' de corpor' p'd' Willielmi Comit' Banbury per quod idem Edwardus fuit Comes Banbury & seit' de statu gradu titulo & honore Comit' Banbury pred' in dominico suo ut de feodo talliat' videlt' sibi & heredibus masculis de corpor' pred' Willielmi exeun' scilt' apud paroch' Sancti Egidii in Campis pred' Et sic inde seit' existen' idem Edwardus Comes Banbury obiit inde seit' sine hered' mascul' de corpore suo exeun' scilt' apud paroch' pred' post cujus mortem status gradus titulus & honor Comit' Banbury pred' descendebat Nicholao Knollis ut hered' masculo de corpore pred' Willielmi Comit' Banbury videlt' fratri & hered' pred' Edwardi fil' & hered' pred' Willielmi per quod idem Nicholaus fuit Comes Banbury & seit' de statu gradu & honore Comit' Banbury pred' in dominico suo ut de feodo talliat' videlt' sibi & hered' mascul' de corpore pred' Willielmi tunc nup' Comit' Banbury exeun' scilt' apud paroch' Sancti Egidii in Campis pred' Et sic inde seit' existen' idem Nicholaus Comes Banbury obiit inde sic seit' scilt' apud paroch' pred' post cujus mortem status gradus & honor Comit' Banbury predict' descendebat pred' Carolo ut hered' mascul' de corpore pred' Willielmi nuper Comit' Banbury exeun' videlt' fil' & hered' pred' Nicholai nup' Comit' Banbury fratr' & hered' pred' Edwardi fil' & hered' ejusdem Willielmi per quod idem Carolus tempore caption' Indictament' pred' fuit & adhuc existit seit' de & in statu gradu & honore Comit' Banbury pred' in dominico suo ut de feodo talliat' videlt' sibi & hered' mascul' de corpore pred' Willielmi exeun' & Comes Banbury adhuc existit scilt' apud paroch' Sancti Egidii in Campis Et hoc parat' est verificare unde ex quo non nominatur in Indictament' pred' per pred' nomen Comit' Banbury pet' Judic' de Indictament' pred' & si ipse ad Indictament' ill' ulterius respondere compelli debeat, &c.

*Creswell Levinz.*

*Bartholomew Shower.*

Et Johannes Somers Mil' Attorn' Domini Repl. Regis & Domine Regine nunc general' qui pro eisdem Domino Rege & Domina Regina in hac parte sequitur protestando non cognoscendo aliqua in placito pred' Caroli fore vera dicit quod pred' C. Knowles in Indictament' pred' nominat' ad Indictament' ill' respondere debet quia dicit quod ipse idem C. K. per nomen Caroli Comit' de Banbury alias scilt' 13 die Decembris Anno Regni dictor' Domini Regis & Domine Regine nunc quarto exhibuit quandam petitionem suam in-

script' Dominis spiritual' & temporal' in Parliament' adtunc & adhuc tent' apud Westm' in Com' Midd' assēblat' per eandem petition' allegan' & pretendē' quod ipse idem Carolus Jure hereditar' adtunc fuit Comes de Banbury ac un' magnat' hujus Regn' Angl' ac adtunc indictat' pro morte pred' P. L. unde idem Carolus eisdem Dominis spiritual' & temporal' adtunc & ibidem in eodem parliament' assēblat' humillime supplicavit quod ipse idem Carolus de & pro morte pred' P. L. triat' esset per magnat' ejusdem Regni taliterq; superinde process' fuit quod postea scilt' die Martis 17 die Januarii Anno Regni dictor' Domini Regis & Domine Regine nunc quarto per eosdem Dominos spiritual' & temporal' in eodem Parliament' adtunc & ibidem assēblat' secundum legem & consuetud' Parliament' resolut' considerat' & ordinat' fuit quod pred' Carolus non habuit aliquod jus pred' titulo & honori Comit' Banbury quodq; ista eadem petitio abinde dimiss' esset sicut per record' inde inter record' Parliament' hic apud Westm' pred' remanen' plenius liquet & apparet Et hoc parat' est verificare unde pet' judic' & quod Indictament' pred' bon' adjudicetur quodq; pred' C. K. ad Indictament' illud ulterius respondeat, &c.

*J. Somers.*

*T. Trevor.*

*J. Tremain.*

Et pred' Carolus in propria persona Demant' sua ven' & dic' quod pred' placitum p'fat' Attorn' Dominor' Regis & Regine nunc general' in forma pred' superius replicando placitat' materiaq; in eodem content' minus sufficien' in lege existunt ad compellend' eundem Carol' eidem Indictamento ulterius respondere unde pro defectu sufficien' replication' ad placitum pred' p'fat' Caroli in hac parte placitat' idem Carolus ut prius pet' judic' de Indictament' ill' & quod ipse de Indictament' pred' per Cur' hic exoneretur & dimittatur, &c.

Et Edwardus Ward Ar' Attorn' dictor' Dominor' Regis & Regine nunc general' qui pro eisdem Dominis Rege & Regina in hac parte sequitur pro eisdem Dominis Rege & Regina dicit quod placitum pred' Attorn' Dominor' Regis & Regine nunc general' in forma p'd' superius replicand' placitat' materiaq; in eodem content' bon' & sufficien' in lege existunt ad compellend' eundem Carol' eidem Indictament' ulterius respondere Quod quidem placitum superius replicando placitat' materiaq; in eodem content' idem Attorn' dictor' Dominor' Regis & Regine nunc general' pro eisdem Dominis Rege & Regina nunc parat' est verificare prout Cur', &c.

*Edward Ward.*

*Thomas Trevor.*

*John Tremain.*

22 March, 1693.

It is Ordered by the Lords Spiritual and Temporal, in Parliament assembled, That Mr. Attorney General do give this House an Account in Writing of the Proceedings in the Court of King's Bench, against the Person who claims the Title of Earl of Banbury.

11 April,



11 April, 1694.

Then their Majesties Attorney General delivered in an Account of the Proceedings in the Court of *King's Bench*, against the Person who claims the Title of the Earl of *Banbury*, which was read as follows, viz.

*An Account of the Proceedings in the Court of King's Bench, against the Person who claims the Title of Earl of Banbury, deliver'd in by their Majesties Attorney General, pursuant to an Order of the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled, the 22d of March, 1693.*

A BILL of Indictment being found at *Hicks's Hall*, in *December*, 1692. against *Charles Knowles, Esq;* for the Murder of *Philip Lawson, Gent.* it was removed into the *King's Bench*, and the said *Charles Knowles* was, in *Hilary Term* following, arraign'd thereupon in the *King's Bench*, and put in a special Plea in Writing to this Effect, That he ought not to be compelled to answer to that Indictment, because King *Charles* the First, by Letters Patents under the great Seal, which he produced in Court, dated the 18th of *August*, in the second Year of his Reign, created *William*, then Viscount *Wallingford*, Earl of *Banbury*, and conferr'd upon him the Name, Stile, Title, and Dignity of Earl of *Banbury*, to hold to the said *William*, and the Heirs Males of his Body for ever: That Earl *William* thereby became seized of the Honour of Earl of *Banbury*, to him, and the Heirs Males of his Body, and died thereof so seized; and that the said Honour descended to *Edward*, his Son and Heir Male of his Body, who became seized thereof in Fee-Tail to him, and the Heirs Males of the Body of the said *William*, and that he died seized without any Issue Male of his Body; after whose Death, the said Title and Honour of Earl of *Banbury*, descended to *Nicholas Knowles*, as Heir Male of the Body of the said *William*, (that is to say) Brother and Heir of *Edward*, who was Son and Heir of the said *William*, by which the said *Nicholas* was Earl of *Banbury*, and seized of the Title and Honour of Earl of *Banbury*, in his Demesne as of Fee, to him, and the Heirs Male of the Body of the said *William*, then late Earl of *Banbury*, issuing; and being thereof so seized, the said *Nicholas* died, after whose Death, the said Title and Honour of Earl of *Banbury* did descend to the Defendant *Charles*, as Heir Male of the Body of the said *William*, late Earl of *Banbury*, viz. Son and Heir of *Nicholas*, Brother and Heir of *Edward*, who was Son and Heir of *William*; whereby the Defendant came, and yet is seized, of, and in the State, Degree, and Honour of Earl of *Banbury*, in his Demesne as of Fee-Tail, to him, and the Heirs Males of the Body of the said *William* issuing, and yet is, Earl of *Banbury*, which he is ready to verify; and therefore he the said Defendant *Charles*, not being named in the Indictment by the Name of Earl of *Banbury*, pray'd Judgment of the Indictment, and whether he ought further to be compell'd to answer to it.

To which Plea their Majesties Attorney General, by Protestation, not acknowledging any thing in the said Plea to be true, replied, That the Defendant ought to answer to that Indict-

ment, for that the said *Charles Knowles*, by the Name of *Charles Earl of Banbury*, the thirteenth of *December*, in the fourth Year of their Majesties Reign, exhibited a Petition in Writing to the Lords Spiritual and Temporal in Parliament Assembled, thereby alledging, and pretending, that he then was by Right of Inheritance Earl of *Banbury*, and One of the Peers of this Realm; and then Indicted for the Death of the said *Lawson*, and humbly prayed the Lords Spiritual and Temporal in Parliament Assembled, That the said *Charles*, of, and for, the Death of the said *Lawson*, might be Tried by the Peers of this Realm. And that it was thereupon so proceeded, that on the seventeenth of *January* following, it was by the said Lords Spiritual and Temporal, in Parliament Assembled, according to the Law and Custom of Parliament, Resolved, Considered, and Ordered, That the said *Charles* had not any Right to the said Title and Honour of Earl of *Banbury*, and that the Petition should be dismissed, as by the Record thereof, amongst the Records of Parliament, more fully appeared. And prayed Judgment, That the said Indictment might be adjudged Good, and that the Defendant might answer over to the Indictment.

Some Time having been spent in Motions about the Pleadings, and in giving Rules to the Defendant to rejoin to the Attorney General's Replication, and about Bailing the Defendant, and the Defendant having Demurred to the Replication, wherein the Attorney General joined, not moving to have the Record a *Concilium*, (as is usual for the Party to do that Demurs;) the Attorney General moved it in *Michaelmas Term* last, and by Rule of Court it was made a *Concilium*, and appointed to be argued the then next Term, which was *Hilary Term* last; in which Term, near the Beginning, it was argued by Council on both Sides. And on the Defendant's Council's Motion, another Day was appointed for a further Argument the same Term; at which Day it was argued on the King's Behalf, and no Council then attending for the Defendant, the Court made a Rule that the Defendant should answer over, unless Cause should be shewed to the contrary the *Saturday* following; at which Time it was argued for the Defendant; (there being then, and at the last Argument, only Two Judges in Court, one Judge dying in the Beginning of the Term, and another being absent by Reason of Sicknefs.) Upon which last Argument the Court discharged the former Rule; and upon the Defendant's Council's Motion, a further *Concilium* was made of it, for the next *Easter Term*.

The Defendant is under Bail, *Corpus* for *Corpore*.

Upon reading this Day, An Account of the Proceedings in the Court of *King's Bench*, against the Person who claims the Title of Earl of *Banbury*, It is ordered by the Lords Spiritual and Temporal in Parliament Assembled, That such of the Justices of their Majesties Court of *King's Bench*, as are now in Town, and not sick, do attend this House on *Saturday* next at Eleven of the Clock in the Forenoon.

13 April, 1694.

Whereas To-Morrow is appointed for the Judges to attend upon the Account delivered in the eleventh Instant, by their Majesties Attorney General,

General, of the Proceedings in their Majesties Court of *King's Bench*, against the Person who claims the Title of Earl of *Banbury*, It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That all the Judges now in Town, do attend this House thereupon on *Monday* next at Eleven of the Clock, and that all the Lords be summoned then to attend.

27 Nov. 1694.

A Debate arising touching the Proceedings in the Court of *King's Bench*, relating to the Person who claims the Title of Earl of *Banbury*,

The Question was put, Whether Mr. Attorney General shall give this House an Account what Proceedings have been in the Court of *King's Bench*, since the Eleventh of *April* 1694, in Relation to the Person who claims the Title of Earl of *Banbury*.

It was Resolved in the Affirmative.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That their Majesties Attorney General do give this House an Account on *Tuesday* the fourth Day of *December* next, what Proceedings there have been in the Court of *King's Bench*, relating to the Person who claimed the Title of Earl of *Banbury*, since the Eleventh of *April* 1694, and that all the Lords be summoned then to attend.

4 Dec. 1694.

After their Majesties Attorney General had given the House an Account of the Proceedings in the Court of *King's Bench*, in Relation to the Person who claimed the Title of Earl of *Banbury*, and Debate thereupon,

The Question was put, Whether the House shall be now adjourned?

It was Resolved in the Negative. And

Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the proper Officer in the Court of *King's Bench*, do bring before this House, to Morrow at Eleven of the Clock, the Record of the Judgment of *Charles Knowles*, who claimed the Title of Earl of *Banbury*, and the Proceedings of that Court thereupon.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Debate this Day touching the Proceedings in the Court of *King's Bench*, in relation to the Person who claimed the Title of Earl of *Banbury*, shall be adjourned till to Morrow Morning, Eleven of the Clock in the Forenoon.

5 Dec. 1694.

The Record of the Court of *King's Bench* being this Day brought into the House, (pursuant to the Order Yesterday,) relating to the Person who claimed the Title of Earl of *Banbury*, and a Debate arising thereupon, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, that the said Debate shall be, and is hereby adjourned, until *Wednesday* next, the twelfth Day of this Instant *December*, at Ten of the Clock in the Forenoon.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Records of the Court of *King's Bench*, brought in this Day, shall be returned to the proper Officers, and that they attend with them again, on *Wednesday* the twelfth Day of this Instant *December*, at Ten of the Clock in the Forenoon.

VOL. VIII.

12 Dec. 1694.

This Day being appointed to resume the aforesaid Debate, concerning the Person who claimed the Title of Earl of *Banbury*, and for the proper Officers of the Court of *King's Bench*, to attend with the Records of that Court relating thereunto, It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the said Debate shall be, and is hereby adjourned, 'till *Monday* the twenty-fourth Day of this Instant *December*, at Ten of the Clock in the Forenoon, and that the proper Officers of the Court of *King's Bench*, do then attend with the Records as was formerly ordered.

26 Jan. 1697.

A Petition to His Majesty being this Day offered on Behalf of the Person who claims the Title of Earl of *Banbury*, and His Majesty's Reference thereupon, It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the said Petition and Reference shall be considered on *Saturday* the twenty-ninth Day of *January* Instant, at Twelve of the Clock, and that all the Lords be summoned then to attend; and the Clerks then bring the Books wherein the former Proceedings in Relation to this Matter are entered.

29 Jan. 1697.

The Order being read for considering the Petition of the Person who claims the Title of Earl of *Banbury*,

The Petition to His Majesty, and His Majesty's Reference thereupon to this House, was read as follows.

To the KING's Most Excellent Majesty.

The humble Petition of *Charles Knowles*, Son and Heir of *Nicholas*, Brother and Heir of *Edward*, Son and Heir of *William*, late Viscount *Wallingford*, and Earl of *Banbury*,

Humbly Sheweth,

THAT His late most Excellent Majesty King *Charles* the First, by his Letters Patents, under his Great Seal of *England*, bearing Date at *Cambury*, the 18th Day of *August*, in the second Year of his Reign, of his special Grace, certain Knowledge, and meer Motion, did prefer and create *William*, then Viscount *Wallingford*, to the State, Degree, and Honour of Earl of *Banbury*, and did give to him the Name, Style, and Dignity thereof, and with the same Name, Degree, and Dignity of Earl, did really invest, and Nobilitate him, to hold the same to him the said *William*, and the Heirs Males of his Body issuing for ever: That by Force of these Letters Patents, the said *William* became seized to him, and the Heirs Males of his Body, of the said Earldom, and accordingly had and enjoy'd Place and Precedency in the House of Peers, as an Earl of this Kingdom: That the said *William* died so seized, leaving *Edward* and *Nicholas* his Issue: That *Edward* died under Age, and without Issue; whereupon the said Title descended to your Petitioner's said Father *Nicholas*, and he became thereby rightfully entitled to the

P

said



saïd Name, Title, and Dignity, and was accordingly deemed, reputed, and taken as Earl of *Banbury*, and as such, sat in the House of Lords, in the Convention Parliament, upon the Restoration of King *Charles II.* That afterwards, some Dispute arising, the Precedency of the saïd *Nicholas*, and the Influence of the late King *James*, then Duke of *York*, prevailing against him, your Petitioner's saïd Father, he was forced to withdraw and forbear the Use of his Right of sitting in the House, as a Peer of this Realm, during his Life, altho' he had proved his Legitimacy and Heirship, by Four Witnesses, sworn at the Bar of the House of Peers, and examined at a Committee, who made a Report accordingly, in favour of his Right, as by the Proceedings in the House more fully appears: That by his Decease, the saïd Title and Dignity descended upon your Petitioner, as his Son and Heir: That your Petitioner having had the Misfortune of being accused and imprison'd for killing *Philip Lawson*, your Petitioner did, for his Trial, and in order to have it according to the Laws of this Realm, by his Peers, petition the House of Lords thereupon; whereas your Petitioner ought in Duty, and according to the legal Methods in Cases of this Nature used and approved, to have made his Application to your most Sacred Majesty, as the Fountain of all the Honour within this Realm, and accordingly, the misadvised Petition was dismissed. And your Petitioner further humbly shews, That then your Petitioner was indicted for the Offence committed, by the Name of *Charles Knowles*; and upon his Arraignment in the *King's Bench*, your Petitioner did plead the saïd Title, and the Descent thereof to him, in Manner aforesaid, and that therefore his Name was *Charles Earl of Banbury*; to which your Majesty's Attorney General replied the Dismission of the saïd Petition by the House of Peers, and thereupon your Petitioner demurred; and after many long Arguments, Judgment was given by the Right Honourable the Lord Chief Justice *Holt*, and the rest of the Judges there, in favour of your Petitioner's Name and Title: That your Petitioner stands likewise indicted by the Name of *Charles Earl of Banbury*, for the same Offence, and that the same remains undetermined, for the Reasons aforesaid. That by Reason of the Premises, your Petitioner did suffer long Imprisonment, and great Expences, and is still under the same Accusation, by the Name of a Peer, and as such hath been taxed upon the Poll Act, and during your Petitioner's Troubles, Writs have issued out of your Majesty's Court of *Exchequer*, for the same Charge as a Peer, which he hath since satisfied.

Now, forasmuch as your Petitioner humbly conceives himself well entituled to the saïd Title and Dignity, and that your Petitioner may the better be enabled to shew and manifest his Zeal for your Majesty's Service, as by the Duty of his Allegiance he is obliged,

Your Petitioner humbly prays your Majesty's tender Consideration of the Premises, and that you would be pleased to declare your Royal Pleasure in favour of your Petitioner's saïd Right, by granting him a Writ of Summons to Parliament, or

to recommend your Petitioner's Case to an Examination by the Lords Spiritual and Temporal in Parliament assembled, in order to your Majesty's more certain Information of the Truth of the Premises; or otherwise to do herein, as your Majesty's great Wisdom shall seem most meet.

*And your Petitioner shall, as in Duty bound, daily pray for your Majesty's, &c.*

Banbury.

*William, R.*

WE are graciously pleased to refer this Petition to the House of Peers, to examine the Petitioner's Claim and Title therein mentioned, and to certify us how the same shall appear to them, with their Opinion thereupon. Given at our Court at *Kensington*, the 18th Day of *January*, 1697, in the Ninth Year of our Reign.

By His Majesty's Command,

*Ja. Vernon.*

After Debate thereupon,

These Lords following were appointed to draw up a Representation, to be presented to His Majesty, of what Proceedings have been formerly in this House, in relation to this Matter, and report the same to this House.

*Dux Somerset,*  
*Dux Bolton, &c.*

Their Lordships, or any Five of them, to meet on *Tuesday* next, at Eleven of the Clock in the Forenoon, in the Prince's Lodgings, near the House of Peers. — And it is Ordered, that this Committee do meet again on *Thursday* the third Day of *February* next, at Eleven of the Clock, in the same Place, to consider of the Proceedings of the Court of *King's Bench*, since the Judgment of this House, 17th of *January*, 1692, in relation to this Matter, and have Power to send for Persons, Papers, and Records, and report to this House their Opinion thereupon.

3 *February*, 1697.

The Earl of *Rochester* reported from the Committee the Representation drawn by them to be presented to His Majesty, in relation to the Proceedings of this House upon the Petition of a Person who claims the Title of Earl of *Banbury*, which was read and agreed to as follows, *viz.*

We the Lords Spiritual and Temporal in Parliament assembled, having received a Reference upon a Petition to your Majesty from a Person who stiles himself Earl of *Banbury*, for a Writ of Summons to sit as a Peer in Parliament, do humbly represent to your Majesty, That above five Years since, the same Person did petition the House of Lords: That being indicted for the Death of *Philip Lawson*, he might be admitted to his Trial by his Peers; and that if any Question should arise thereupon, that he might be heard by his Council, at the Bar of this House: Upon which the Lords did order the Petitioner to be heard by his Council at the Bar of their House, for the making out his Title to the saïd Earldom, and also your Majesty's Attorney General to be heard on your Majesty's Behalf; and upon full Hearing on both Sides, the House came to this Resolution and Judgment.

That

That the Petitioner had no Right to the Title of Earl of *Banbury*, and order'd his Petition to be dismiss'd; which Judgment, the Lords have great Reason to believe, was not made known to your Majesty, at the Time of making the afore-said Reference. All which is humbly represented to your Majesty.

Ordered, That the Lords, with white Staves, do attend His Majesty with the Representation of this House, concerning the Person that claims the Title of Earl of *Banbury*.

7 February, 1697.

The Earl of *Rochester* having offer'd to the House what he was order'd to report from the Lords Committee, appointed to consider of the Proceedings in the Court of *King's Bench*, since the Judgment of this House, of the 17th of January, 1692, in relation to the Person who claim'd the Title of Earl of *Banbury*, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, that this Matter shall be considered on Thursday next at Eleven of the Clock.

10 February, 1697.

After reading this Day the Reports from the Lords Committee, appointed to consider of the Proceedings in the Court of *King's Bench*, since the Judgment of this House, the 17th of January, 1692, in relation to the Person claiming the Title of Earl of *Banbury*, and sending for, and hearing the Lord Chief Justice of that Court, and Mr. Justice *Eyre*, to the Matter of the said Report, and Debate thereupon; It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, that this Debate shall be, and is hereby adjourn'd to Monday next, at Eleven of the Clock in the Forenoon; and that the said Lord Chief Justice, and Mr. Justice *Eyre*, do then attend, and also one other Judge of each Court in *Westminster-Hall*.

But there was no further Proceeding in this Business.

*The Proceedings in the House relating to the Title of the Earl of Banbury, before 22 March, 1693, is as followeth.*

Earl of Banbury. 13 July, 1660.

It was moved, That there being a Person that now Sits in this House as a Peer, who, as is conceived, hath no Title to be a Peer, viz. the Earl of *Banbury*, It is ordered, that this Business shall be heard at the Bar by Council, on Monday come Sevensnight.

6 June, 1661.

The Lord Great Chamberlain signified to the House, That the King appointed him to deliver a Paper to their Lordships Consideration, which was presented to His Majesty, and the House commanded the same to be read, which was done, viz.

To the KING's Most Excellent Majesty.

*The humble Petition of Nicholas, Earl of Banbury.*

*Humbly sheweth,*

THAT your Majesty's Royal Father, King *Charles*, by his Letters Patents, under the Great Seal of *England*, bearing Date the eight-

eenth of *August*; 2 Car. for the great and many Services done by your Petitioner's Father, Sir *William Knowles*; Knight, and Viscount *Wallingford*, granted to him, and his Heirs Males of his Body issuing, the Name, Title, and Dignity of Earl of *Banbury*, with all Privileges of State, and Voice in Parliament; as other Peers of the Kingdom had, as by the said Letters Patents more fully appears.

That the said Earl, after marrying with *Elizabeth*, Daughter of the Earl of *Suffolk*, had Issue by her, *Edward*, his eldest Son, who died without Issue, and your Petitioner was born in January 1630, about a Year and a Half before the said Earl's Death.

That your Petitioner, as Son and Heir of the said late Earl, Sate in the last Parliament as Earl of *Banbury*, as of Right he might, and hath used and had all Privileges as other Earls there; but having no Writ of Summons to this present Parliament from your Majesty, as other the Peers have, hath forborne to Sit there, although he hath done nothing to deprive him of his Title thereto, nor to his Knowledge to incur your Majesty's Displeasure.

Your Petitioner therefore humbly prays, That your Majesty will be graciously pleased; that he may have a Writ of Summons to this Parliament, as Earl of *Banbury*, and enjoy all the Precedency and Privilege thereunto belonging, granted by your Majesty's Royal Father, by his said Letters Patents.

And your Petitioner shall acknowledge your Majesty's Justice therein, with due Gratitude, and with all Alacrity and Fidelity endeavour to serve your Majesty with his Life and Fortune, and ever pray for your Majesty's long and happy Reign.

*Banbury.*

This being read, the Lord Chancellor acquainted the House, That His Majesty signified his Pleasure to him, that no Writ should be issued out to Summon the Earl of *Banbury* to this Parliament, upon some Question that was made in this House last Parliament, concerning him.

Hereupon it is Ordered, That the said Petition, and Contents thereof, are hereby referred to the Lords Committee for Privileges, who having heard the Petitioner by his Council, or otherwise, and Mr. Attorney General on the King's Behalf, are afterwards to make Report thereof to this House, and their Lordships to meet when they please.

15 June, 1661.

Upon Report of the Committee of Privileges, That the Earl of *Banbury* desires some Witnesses may be examined on his Behalf, among whom is the Countess of *Salisbury*, It is Ordered, That the Committee have hereby Power to send for such Witnesses as they think fit; observing such Decorum as the Quality of the Person requires: And further, That Mr. Attorney General do attend that Committee on Monday next in the Afternoon.

20 June, 1661.

Ordered, That the Report from the Committee of Privileges, concerning the Earl of *Ban-*



*Banbury*, shall be made on *Friday* the twenty-eighth of this Instant *June*.

1 *July*, 1661.

Upon the Report this Day made, concerning the Petition of *Nicholas*, Earl of *Banbury*, formerly brought into this House by a Peer of this Realm from His Majesty, whereby the Petitioner prayeth a Writ of Summons to this Parliament, as Earl of *Banbury*, and to enjoy all the Precedencies and Privileges thereunto belonging, granted by His Majesty's Letters Patents to the last Earl of *Banbury*; It is Ordered, that the Cause shall be heard at the Bar on *Monday* the eighth Day of this Instant *July*, by Council, and Witnesses are to attend at the said Hearing; at which Time, Mr. Attorney General, and others of His Majesty's Council, (having timely Notice given,) are likewise to be heard on the King's Behalf.

9 *July*, 1661.

This Day the Cause of *Nicholas*, Earl of *Banbury*, upon his Petition, wherein he prays a Writ of Summons to this Parliament, as Earl of *Banbury*, and to enjoy all the Precedencies and Privileges thereunto belonging, granted by His Majesty's Letters Patents to the last Earl of *Banbury*, was heard by Council on the Earl's Part; and also Mr. Attorney General, Serjeant *Maynard*, and Serjeant *Glynn*, Council on the King's Behalf, were heard; and in regard it was now late, It is Ordered, that the Resolution of this Business shall be taken into Consideration to Morrow Morning.

10 *July*.

Upon Consideration of the Business of the Earl of *Banbury*, heard at this Bar Yesterday, and after a long Debate thereof, It is Ordered, That the Matter now in Debate, concerning the Earl of *Banbury*, is referred to the Consideration of the Committee of Privileges; and also the Matter of the Right of Precedency between the said Earl of *Banbury*, and several Peers of this Realm, and to make Report thereof to this House; the Committee to meet on *Monday* next, at Three of the Clock in the Afternoon.

19 *July*.

The Earl of *Northampton* reported from the Committee of Privileges, that their Lordships have considered of the Earl of *Banbury*'s Business referred unto them, and their Opinion is, That the Earl of *Banbury* is in the Eye of the Law, Son of the late *William* Earl of *Banbury*, the House of Peers should therefore advise the King to send him a Writ to come to Parliament.

Also their Lordships are of Opinion, that the Earl of *Banbury* ought to have Place in the House of Peers, according to the Date of his Patent, and not according to the Tenor of that Part thereof which ranketh him before other Earls created before *William*, Earl of *Banbury*. All which the Committee offer to their Lordships Judgment.

Ordered, That this House will take this Report into Consideration to Morrow Morning.

25 *July*.

Ordered, That on the second *Thursday* after the next Meeting of this House, after the Adjournment, this House will take into Consideration the Report of the Earl of *Banbury*'s Business.

28 *Nov.* 1661.

The House took into Debate the Report concerning the Earl of *Banbury* formerly made to this House; and the Question being put, Whether to put off the Consideration of this Business to a further prefixed Day? It was Resolved in the Affirmative.

9 *Dec.* 1661.

An Act was read a first Time, declaring *Nicholas*, Earl of *Banbury*, to be Illegitimate.

26 *Oct.* 1669.

Upon calling of the House of Peers this Day, the House taking Notice that the Earl of *Banbury*'s Name is not in the List by which the Lords were called, It is Ordered, that it be referred to the Committee of Privileges, to examine why the said Earl of *Banbury*'s Name is left out of the said List, he having formerly sate as a Peer in this House, and to peruse all former Proceedings in this House concerning him, and to make Report thereof to the House.

25 *Nov.* 1669.

The Earl of *Essex* reported to the House, that the Committee of Privileges, in Pursuance of the Order of this House, have examined their Proceedings concerning the Earl of *Banbury*; the Order consisted of Two Parts, *First*, Why his Lordship's Name was left out of the List of the Peers, touching which, the Lords have spoken with Sir *Edward Walker*, Principal King of Arms, who delivered in the List, and he produced a Book out of the Herald's Office, where it appears that the last *William*, Earl of *Banbury*, died in the Year 1632, and having had two Wives, left no Children.

Likewise he produced a Roll, being a Procedure of the King and the Peers to Parliament in 1640, in which List there is no mention of the Earl of *Banbury*'s Name among the Peers.

Upon these Grounds the said *Edward Walker* left out the Name of the Earl of *Banbury* in his List given unto this House.

The second Part of the Order was to present to the House, an Account of the former Proceedings in this House, concerning the Earl of *Banbury*, and the Lords Committee find, That 6 *June*, 1661, &c. being a Recital of the Proceedings before set forth.

23 *Feb.* 1669.

A Petition was presented to this House from the Earl of *Banbury*, which was read as follows.

To the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled.

The humble Petition of *Nicholas*, Earl of *Banbury*.

Sheweth,

THAT your humble Petitioner hath the Honour to be a Peer of this Realm by Descent, and is legally entituled by Right of Inheritance, to the Dignity and Honour of the Earl of *Banbury*, and ought therefore to have and enjoy his Voice and Seat in Parliament, and all other Preheminencies to such Dignity belonging; and hath always, in all Taxes, and Payments of Poll-Money, and Benevolencies, paid such Sums, and in such Proportions, as to the Quality and Degree of an *English* Earl did appertain.

Never-

Nevertheless your Petitioner hath not yet had the Honour to receive from His Majesty such a Writ of Summons to Parliament as is usually granted to other Peers of this Realm. Wherefore since your Petitioner is well assured that no Legal Impediment can be objected and proved against him, he most humbly prays this Most Honourable House, that he may receive such a Writ of Summons to the Parliament now Sitting, as may enable him to serve His Majesty there according to the Duty of his Place and Quality.

*And your Petitioner shall pray, &c.*

Banbury.

Upon this, the House made this Order following.

Upon reading the humble Petition of *Nicholas Earl of Banbury* this Day, praying, that he may receive such a Writ of Summons to the Parliament now Sitting, as may enable him to serve His Majesty there, according to the Duty of his Place and Quality; It is Ordered, That the said Petition be referred to the Lords Committee for Privileges, whose Lordships having considered thereof, are afterwards to report their Opinions to the House.

10 June, 1685.

Upon reading the Petition of a Person that claimeth the Title of Earl of *Banbury*, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That it be referred to the Lords Committee for Privileges, to examine all former Proceedings of this House, relating to that Case, and to report the same to this House.

23 June, 1685.

The Earl of *Aylesbury* reported from the Committee of Privileges, that their Lordships had read the Petition of the Person that claimeth the Title of Earl of *Banbury*, referred by the House to them to examine all former Proceedings of the House relating to that Cause; that their Lordships find, &c. being a Narrative of all Proceedings before recited. Whereupon the following Order was made.

Upon Report from the Committee for Privileges of the State of Proceedings in the Journals of this House in the Business referred to them, concerning the Claim of a Person to the Title of Earl of *Banbury*, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That this House will hear His Majesty's Attorney General on His Majesty's Behalf against the said Claim, as also Council for the Person who claims the said Title of Earl of *Banbury*, on Monday the Sixth of July next, at Ten of the Clock in the Forenoon.

13 December, 1692.

Upon reading the Petition of a Person that claims the Title of Earl of *Banbury*, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That this House will hear His Majesty's Attorney General on His Majesty's Behalf, and all other Persons that may be concerned therein, against the said Claim, as also Council for the Person who claims the said Title

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of Earl of *Banbury*, on Monday the 9th Day of January next, at Ten of the Clock in the Forenoon, whereof the Petitioner is to cause timely Notice to be given to His Majesty's Attorney General, and all other Persons that may be concerned in the said Claim:

9 January, 1692.

After hearing Council this Day at the Bar, upon the Petition of the Person that claimeth the Title of Earl of *Banbury*, and their Majesties Attorney General, and Debate thereupon, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Consideration of this Business shall be, and is hereby adjourned to Saturday next at Twelve o'Clock, and that the Two Inquisitions taken formerly concerning this Case, shall be then brought, and that the Heralds do then attend, and bring with them all such Papers and Evidence as are in their Office, relating to this Matter, and that their Majesties Attorney General be then further heard on their Majesties Behalf, and all others that may be any wise concern'd.

14 January, 1692.

Council being called in, and after some Time withdrawn, the Order following was made.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Officer, who hath the Custody of the Inquisitions taken after the Death of *William Earl of Banbury*, in the Counties of *Berks* and *Oxon*, do forthwith attend this House with the said Inquisitions.

The Attorney General being appointed to attend this Day, and not being present when the Cause of the Person claiming the Title of Earl of *Banbury*, was to be argued at the Bar of this House, the following Order was made. It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That an Address shall be made to His Majesty, that the Attorney General for the Time being, may attend this House as an Assistant, and that it be referred to the Lords Committee for Privileges, to draw the same, and that the Committee meet on Tuesday next, at Four of the Clock in the Afternoon.

After hearing this Day the Heralds at Arms, as to the Petition of the Person that claims the Title of Earl of *Banbury*, as also the Attorney General on their Majesties Behalf, against the said Claim, and Council for the Person claiming; It was resolved, upon the Question, That the Debate thereupon shall be adjourned until Tuesday Morning next, the first Business.

17 January, 1692.

Then the Order of the fourteenth Instant being read for resuming the adjourned Debate, concerning the Petitioner who claims the Title of Earl of *Banbury*, and the Inquisition formerly taken upon the Death of *William Earl of Banbury*, being also read, and after Debate upon the said Claim,

This Question was put, Whether all the Judges shall be heard in this Case?

It was resolved in the Negative.

*Dissentient* 16.

Then this Question was propounded; Whether the Petitioner hath any Right to the Title of Earl of *Banbury*?

Upon which the previous Question was put, Whether this Question shall be now put?

It was resolv'd in the Affirmative.

Q

Then



Then the main Question was put,  
Whether the Petitioner hath any Right to the  
Title of Earl of Banbury?

It was resolved in the Negative.

*Dissentient 20.*

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Petition presented to this House the 13th of December last, by a Person claiming the Title of Earl of Banbury, shall be, and is hereby dismissed this House.

*The ARGUMENTS of the Lord Chief Justice Holt, and Judge Powel, in the Controverted Point of PEERAGE: In the Case of the King and Queen against Charles Knowles, otherwise Earl of Banbury.*

*The King and Queen against Charles Knowles, otherwise the Earl of Banbury.*

HE was Indicted at the Old-Bailey of Murder, and removed the Indictment by *Certiorari* into the King's Bench, and there Pleading in Abatement of the Indictment, that he being Indicted by the Name of Charles Knowles, Esq; at the Time of the taking of the Indictment, was Earl of Banbury, and ought to have been Indicted by that Name; and by his Plea intitling himself to that Dignity, under Edward late Earl of Banbury, whom he alledgeth to be seized, and being seized *obit inde Seisitus*, but omitted in the Plea *sine Herede Masculo de Corpore suo exint*, he making his Title on Failure of Issue-Male of Edward. Then in another Part of his Plea it is alledged, *Per quod idem Carolus fuit & ad huc existit Seisitus*, omitting, *Tempore Captionis Indictamenti predicti*, the Attorney General had replied to the Plea: But before any other thing done, or the Plea, or Replication entered on Record, the Defendant's Council moved they might have Leave to amend their Plea in the Particulars before mentioned. The Chief Justice Holt, my Brother Dolben, and myself, being only in Court, and taking Time to consider of it, my Brother Dolben, and myself, delivered our Opinions, that he might amend it; and my Reasons were, that many Amendments had been made in Criminal Matters by the Court, as appears by Sir John Curson's Case, 2 Cr. 529. and Rolls 2 Rep. 59. Delvridge's Case, Siderf. 243, 225. and Car. Cr. 144. And that none of these Amendments could be made by Force of any of the Statutes of Jeofailes, none of them extending to any Criminal Cause, or other Cause, wherein the King is a Party; as an Information of Instruction, or Quo Warranto, Car. Cr. 312. the King against Sberington Talbot; and therefore those Amendments must be made by the Warrant of the Common Law; and if the Common Law warrants any Amendments in Criminal Matters, certainly while Matters are in *Fieri*, and in the Court by Pleadings, in Order to bring them before the Court for Judgment, before they are entered on Record, the Court may give the Party Leave to Amend, as well in Criminal Causes as Civil, before the Matters are completed and entered on Record. And I said, I could see no Difference, in that the Pleadings in the Civil-Side were brought into the Office in Paper; and in the Crown-Side, in Treason, or Felony, they were brought into the Office in Parchment. For to say it is all Paper, in Order to induce the Court to allow the Amendments, is but a Phrase used

to signify to the Court that nothing is entered on Record; and 'till then the Court hath Power over what is agitated there to allow reasonable Amendments, in Order to bring the Matter before the Court, and relied on the Case of the Attorney General against Trinity-House; Siderf. Fol. 54. But the Chief Justice was *totis viribus* against the Amendments, saying, It was never done but by Reason of our Opinions.

*The KING and QUEEN against Knowles.*

THE Defendant stands Indicted, by the Name of Charles Knowles, Esq; for the Murder of Philip Lawson, who comes and pleads in Abatement of this Indictment, that King Charles the First, by his Letters Patent, under the Great Seal of Great Britain, Dated the eighteenth of August, in the Second Year of his Reign, which he shews to the Court, did create William, then Viscount Wallingford, Earl of Banbury, to hold to him, and the Heirs-Males of his Body; by Virtue of which Letters Patent he was seized of the Honour in his Demesne, as of Fee-Taille, and being so seized, died thereof seized; after whose Death, the Honour of the Earl of Banbury descended to Edward Knowles, as Heir-Male of his Body; who afterwards died seized of that Honour without Heir-Male of his Body; after whose Death, the Honour descended to Nicholas Knowles, Brother of the said Edward Knowles, as Heir-Male of the Body of William, whereby he became Earl of Banbury; and being so seized of that Honour, the said Nicholas died thereof seized, whereby the Honour descended to the Defendant, Charles Knowles, as Heir-Male of the Body of Nicholas, whereby he is seized of the Honour in Fee-Taille to him, and the Heirs-Males of his Body; and concludes, *& hoc parat' est verificare*; and demands the Judgment of the Court, Whether he ought to answer to the Indictment, not being Indicted by the Name of Earl of Banbury. To which Plea the King's Attorney hath replied, That the Defendant, by the Name of Earl of Banbury, did exhibit a Petition to the Lords Spiritual and Temporal in Parliament assembled, thereby alledging and pretending, that by Right of Inheritance, he was Earl of Banbury, and one of the Peers, and was Indicted for the Death of Lawson, and prayed he might be Tried by his Peers; and that *taliter superinde processum fuit*; that by the said Lords Spiritual and Temporal, *Secundum Legem & Consuetudinem Parlamenti Resolutum, Consideratum, & Ordinatum fuit*, that the Defendant, Charles Knowles, had not any Right to the Titles and Honours of Earl of Banbury, and that his Petition should stand dismissed; whereupon the Defendant Demurs. And I am of Opinion that Judgment in this Case ought to be given for the Defendant, and that his Plea is Good, and no ways avoided by the Replication; there having been two Exceptions taken by the King's Council against the Plea, which I shall first answer, before I speak to the Matter of the Replication. The first is, That the Defendant hath concluded his Plea with *hoc parat' est verificare*, and not *per recordum*; whereas Peerage can no way be tried but by Matter of Record, which is most true, that Peerage by Creation is triable only by Record, but it is a *non Sequitur*, that therefore his Plea ought to conclude with a *verificare per recordum*; and indeed



indeed the Plea which now is good, had been bad, if it had so concluded; for he having pleaded his Letters Patent of Peerage to his Ancestor, under whom he derives his Honour with a *profert in Cur'*, he hath sufficiently certified the Foundation of his Peerage by Matter of Record, he being a compleat Nobleman by his Creation, by his Letters Patent, without any other Ceremonies, as appears by *Penfon and Redhead's Case*, *Noy*, 150. *Inst.* 16. C. 10. the 12 *Rep.* 71. And if he be to be Arraigned after such Creation, and before the Parliament Sits, he shall be Try'd by his Peers. And where Letters Patent are pleaded and shewn to the Court under the Great Seal, the adverse Party cannot deny them, nor plead *Nul tiel Record*; *Eden's Case* in the 6th Report, and need not conclude with a *verificare per Recordum*, for he cannot have a Day to bring in the Record which he hath already shewn to the Court, besides the Descent of *Edward* to the Honour, his dying without Issue, whereby it came to *Nicholas*; and his Death, and the Descent to the Defendant pleaded, after the Letters Patent set forth, are all Matters of Fact, triable by the Country, and not by the Record, by Reason whereof he could not so conclude his Plea, there being no Authority in Law to warrant the Conceit of the King's Council, that there must be a Writ out of Chancery under the Great Seal, certifying all these Matters the Defendant hath pleaded to make out his Peerage, the Books cited by them, no ways warranting that Opinion; for the Books of 35 *Hen.* 6. 46. No. 3. 165, and 347. *Reg.* 287. *Dyer*, 314, 48. *Edw.* 3d. 30, 48. *Aff.* Pl. 6. and 4. *Inst.* 126, are all Writs of *Privilege*, or *Cautionary Writs*, as may be seen in the *Lord Savile's Case*, *Car. Croke*, 205, not to put Peers in Juries, or make other Process against them than by the Law ought to be, and nothing to the Purpose. And the Books of 22 *Affize* Pl. 24, which is abridged in *Br. fit' Aff.* 240, which gives the greatest Umbrage. So this Opinion makes out no more but that Peerage is triable by Record, and not by Jury; for it is plain the Plea there pleaded in Abatement was ill, that he was the Son of an Earl, and not named Earl; for the Foundation and Substance of his Plea being a Matter of Record, ought to have been certainly alledged by him, 1 *Inst.* 303. And he ought to have began his Plea in his Ancestor Nobilitated by the Matter of Record, and then deduced his Descent under him, which caused the Saying there, *That Peerage was not Triable by the Affizes, but by the Record out of Chancery*. And it is plain from that Book, the Plea was not allowed; for they did plead over to the Affize: So how this can be made an Authority, that a Writ must be had out of Chancery, certifying all these Matters of Fact, and that they must be so said, I do not understand. My Lord Coke, in his 1 *Inst.* 74. tells us of six Manners of Trial by Certificate, of which I am sure this is none: Neither is there any such Writ or Precedent of such a Trial, to be found in any of our Law-Books, of which a Certificate by Writ appears; and Writs being, as *Fitz-Herbert* tells us in the Preface to his *Natura Brevium*, the Foundation on which the Law depends. If there be no such Writ, we may safely conclude there is no such Law; and it is evident by 1 *Inst.* 16, and the Countess of *Rutland's Case* in the sixth Report, that Nobility may be gain'd by Matter in Fact,

as Marriage, as well as by Creation and Inheritance. Nobility may be also gain'd by Descent after Creation; which Descent and Marriage are Matters of Fact, and Triable by Jury, as is held in the 6th Report 53; and therefore the Plea here well concluded, and is good, notwithstanding the Exception. Neither is the other Exception, which hath been taken to the Plea, of more Weight; which is, that it doth not appear by the Defendant's Plea he is a Peer, the Defendant having not pleaded his *Unus Pariv' bujus Regni Angliæ*, nor averr'd *Banbury* to be in any County of *England*; which, I think, he need not to do, and that it is now better pleaded than if it had been so pleaded; for he hath by his Plea certainly pleaded the Letters Patent of Creation to his Ancestor under the Great Seal of *England*, whereby he was made Earl of *Banbury*, and shews them to the Court; and being Nobilitated under the Great Seal of *England*, he is a Peer of *England*, though the Place from which he has his Name of Honour be not in *England*, but in a foreign Country; for, that a Lord hath the Name of a Place in his Style, is of no further Necessity than that the Patentee might have an Estate in his Honour within the Statute *de Donis*, which, without such a Name, would be a Fee-Simple Conditional, 22 *Rep.* 81. 7 *Rep.* 33. *Nevill's Case*. And I believe no Patent of Creation of an Earl can be shewn, wherein the Name of Honour is mentioned in the Patent to be in any County: Of Barons, there are some in which the Place is named to be in such a County, but very many are otherwise, which shews it not necessary. But I must agree that an *Irish* Peer must be Created under the Great Seal of *England*; but then they are distinguished from *English* Creations by *in Terra*, or *in Regno*, or *in Dominio nostro Hiberniæ*, or the like, in due Places of the Patent, *Selden's Titles of Honour*, 696. *Pryn's Animadversions*, 316, which makes the Distinction: For, without those Words, it would be an *English* Creation passing the Great Seal; and though this be in a Plea in Abatement, which requires a Certainty, yet that Certainty is to be but to a certain Intent in general, 1 *Inst.* 303. And if Noblemen made under the Great Seal of *England*, are generally to be intended Peers of *England*, then this Plea, so pleaded, contains in it sufficient Certainty without other Averment, or the precise Words of *Unus Parivum*. It is true, had a Bishop, who is a Peer *ratione Baronie*, which he holds in *Jure Ecclesiæ*, had Occasion to have pleaded such a Plea, or a Plea to the Jurisdiction of the Court, he must have pleaded his Peerage in that Manner that he is *unus de Paribus Regni*; for he hath no Letters Patent to plead, 4 *Inst.* 15. But he who is a Peer *ratione Nobilitatis*, needs not plead his Peerage otherwise than according to his Creation. So that the Defendant's Plea, notwithstanding these Objections to it, I hold good.

The next Thing to be considered, is, Whether the Replication to it doth any ways avoid it; which is no more, but whether this Vote, Judgement, or Order of the House of Peers, for in all the Words of it, it is pleaded *resolutum, consideratum, & ordinatum fuit*, (and I would take it in its largest Extent the Matter itself will bear) doth any ways take away or barr the Defendant of his Name of Dignity. And I am of Opinion it doth not. Nobility is fixed to the Identity of the Person, and Inherent in the Blood Nobilitated by



by the King, and cannot be granted over or barr'd by him who hath it, as is held in *Jones's Rep.* 116. and the 4th *Inst.* 126. and resolved in Parliament in my Lord *Purbeck's Case*, *Showers's Cases in Parliament*, *Pag.* 1. And if it be an Honour of Inheritance, the Heir of the Peer on whom it descends cannot waive it, or the Privilege of it as to be tried by his Peers, and is so held in the Lord *Delaware's Case* in 11 *Rep.* and 3 *Inst.* 30. And as a Peer cannot divest himself of his own Honour, or the Privilege of it, so his Peerage can by no Law of this Kingdom, as I know, be taken from him, but by Act of Parliament, Attainder of his Person, or by the *Scire Facias*, to repeal his Patent if the Creation is by Letters Patent; for where the Creation is by Letters Patent, they being once under Seal, the King cannot countermand them, as is held in the Lord *Abergavenny's Case*, 12 *Rep.* 71. though where he is designed to be enobled by Writ, the King may supersede the Writ after it is under Seal, and before the Parliament; but Letters Patent under the Great Seal are a Conveyance at the Common Law, and the Patentee hath an Interest settled in him in Things thereby granted, which is to be directed and governed by the Rules of Law; and therefore a Peer, if he be created by Letters Patent, his Estate of Inheritance in those Patents must be limited by apt Words, or else the Grant will be void; because it is settled in him, and by a Conveyance at the Common Law, as is held 1 *Inst.* 16.

And, by such a Creation, an Honour may be intail'd within the Statute *Westm.* 2. and the Descent of it is to be governed according to the Rules of the Common Law; and it is resolved to be an Hereditament forfeitable for Treason within 26 *H.* 8. *Nevill's Case* 7 *Rep.* 34. and therefore the Defendant having by his Plea intitled himself to an Estate Taile in this Honour, under the Letters Patent to Viscount *Wallingford*, and the Heirs-Males of his Body, as a Lineal Descendant under that Intail, hath a Freehold and Inheritance in that Honour vested in him by Common Law, to be protected in it, and governed according to the Rules of Law; and cannot be disinherited, or debarred of it by the known Laws of the Kingdom, unless it be *Judicium Parium*, or *per Legem terræ*, which my Lord *Coke* in his 2 *Inst.* fol. 49, and 50. says, is by due Process of Law, or lawful Trial in Course of Judicature, on neither of which is this Vote or Order founded. For tho' the House of Peers be a supreme Court of Record, yet every Vote there passed is not an Act of Judicature, unless the Proceedings in order to it had been Judicial; which in this Case, I think, is pretty clear they were not: For the Defendant's Petition, to be tried, being indicted of Felony, could give them no Jurisdiction over his Peerage, and as a House of Peers, I take it, have no such Power, unless the King, on a Petition, refers the Matter to them, which gives them a Jurisdiction, which before they had not. And this appears by the Lord *Delaware's Case* in the 11 *Rep.* And the Lord *Willoughby's* and the Earl of *Oxford's Case*, in *Jones's Rep.* 96. and the other Precedents cited by my Brother *Levinz* of my Lord *Abergavenny's*, the Lord *Purbeck's*, the Lord *Fitzwalter's*, \* the Lord *Berkly's*, the Lady *Obrian's*,

the Lady *Freschevill's*, and the Lady *Felton's Cases*, which were all determined by the King's Reference on their Petitions to him in the House of Peers: For the King, being the Fountain of Honour from whence all Dignities are derived, (for none can be a Peer without the King's Creation, or his Consent by Act of Parliament; for it is held in *Jones's Rep.* 104. an Ordinance of the House of Lords cannot make a Peer,) the King hath an Interest in the Person so dignified for his Council in Peace and Defence in War, as appears in the 7th *Rep.* 34, and 9 *Rep.* 49. And by reason of his great Trust and Confidence, the Honour cannot be taken from the Peer, or transferred by him, being an Incident inseparable to him, without the King's Consent; 12 *Rep.* 28. 4 *Inst.* 126. and by the Common Law, the King having a Prerogative to try his Cause in what Court he pleases, 4 *Inst.* 17. when a Petition is exhibited to him for any Right the Subject pretends to, be it Peerage, or other Thing, the King may indorse that Petition as he pleaseth; which Indorsement the Party must pursue, for the Indorsement is the Warrant, and gives the Jurisdiction: *Standford's Prerogative* 738. Therefore without such Reference, by Indorsement of a Petition, they can have no Jurisdiction; for then Peerage might be taken away without the King's Consent, which by Law I have proved it cannot be: And no Precedent hath been cited, nor I believe can be found, where the House of Lords did ever take on them to determine Right of Peerage without such Reference on a Petition first made to the King, or did vote or adjudge a Man to have no Right to his Peerage, who petitioned to be tried by his Peers; and, where there is no Example, nor Precedent, it is a forceable Argument that the Law will not bear it, for what never has been done shall be presumed never could be done: I must agree that the House of Peers have Jurisdiction over their own Members in Matters of Privilege, Precedency, and for any other Thing relating to the Parliament, which are to be determined *Secundum Legem & Consuetudinem Parliamenti*, but not by the Common Law, 4 *Inst.* 15, and 363. But over the Estates or Honours of their own Members, in which they have Freeholds and Inheritance, no Law, as I know, has given them Power; nor made them any Judicature for that Purpose, they being to be determined and governed by the known Rules of the Common Law, which is every Subject's Birth-right, and to which he is born inheritable; and by any other Law or Custom, tho' the House of Lords be the supreme Court of Record in the Kingdom, and its Jurisdictions, and the Methods of its Proceedings are ascertain'd by that Law; and therefore tho' it were Ordered in the Lords House, that those who were sent Justices to *Ireland* should have no Excuse; yet that being but an Order, was void to bind the Subject, 2 *Inst.* 47. And, I hope, it can be no Diminution of the Power of that Honourable House, whilst I affirm they can do in that supreme Court no more than what by Law they may do; and if they exceed that Power by holding Plea, of which the Common Law hath not given a Jurisdiction, what they do will be void, and of void Things all Persons may take Advantage. And no such Judgment

\* See these Cases in a Book, entitled, *Proceedings, Precedents, and Arguments on Claims and Controversies about Baronies by Writ, and other Honours.* Fol. Printed 1734.



ment or Proceeding can bind any inferior Court from examining of it, or declaring it to be void in Law; for suppose a Writ of Error was brought in the House of Lords of a Judgment given in the Common Pleas, as was attempted by the Bishop of *Norwich* in *Edw. Third's* Time, which you may see in the 4 *Inst.* 31. and the Lords should reverse such Judgment, might not the Common Pleas, tho' they are an inferior Court, judge it to be void, and issue an Execution on that Judgment, the Reversal being void, no Writ of Error lying in Parliament of any such Judgment? And if this be a Judgment or binding Order, which is set out in the Replication, that the Defendant hath no Right to the Title or Honour of Earl of *Banbury*: One or both of these two Things must be wrought by it, *viz.* The Patent of Creation vacated and damned, or the Defendant, or some under whom he derives his Descent to this Honour illegitimated, neither of which can be done by this Method of Proceedings in this supreme Court on the Defendant's Petition to be tried: For the Letters Patent being a Conveyance at the Common Law, the Patentee is entituled to the Thing thereby granted by Matter of Record, which cannot be vacated but by a *Scire Facias* at the Suit of the King, to which the Patentee may have his Answer, *Dyer* 198. For our Law judgeth no Man before he be heard; and the Defendant, or any other of the Descendants in the Estate Taile to their Honour, cannot in this summary way by a Vote be bastardized without a Lawful Trial; which in general Bastardy must be by Certificate of the Ordinary; or in particular Bastardy alleged, it must be tried by Jury, 2 *Inst.* 99. Sir *John Davies Rep.* 52. And no Man by the Law can by any Means, unless by Act of Parliament, be made illegitimate after his Death; 1 *Inst.* 244. and it would be of mischievous Consequence to the noble Peers, did they hold their Honour in which they have Freeholds and Inheritances, subject to a Law differing from the known Laws of the Kingdom, which Law is, as Mr. Attorney phrased it, *Inter arcana Imperij*; and not to be understood by inferior Courts of *Westminster-Hall*, for then, I fear, they would have but a dark Title to their Honours. And as it is the Defendant's Turn at present, what Nobleman's Case it may be next to be voted no Peer, I know not; therefore it being the Interest and Title of every Peer to his Honour, which I here assert and maintain, I trust I shall not offend against the Jurisdiction of that House, in adjudging this Order void, and no Bar to the Defendant's Honour, being warranted so to do by the supreme Power; *viz.* an Act of Parliament 55 *Edw.* 3. which Enacts, That none be put out of his Franchises or Freeholds, unless he be duly brought in to Answer, and forejudged of the same by Course of Law; and if any thing be done to the contrary, it shall be judged for none: And if the Peers enjoy their Honours under the Security of the same Laws they hold their Estates, as it is most evident they do, then this Law has made the Proceedings void, unless it can be shewn that the House of Peers since this Act hath some Authority given them to warrant this Vote; which hath not yet been pretended to, otherwise than by the Precedents cited by Mr. Attorney; to which I shall give an Answer presently; and to say that the Demurrer is a Con-

fession, that there is a Judgment *Secundum Legem & Consuetudinem Parliamenti*, I never heard that a Demurrer was a Confessal of more than Matters of Fact well pleaded, and not of any Matters of Law in the Judgment of the Court, and confesseth not the Law by it against himself; *Plowd.* 85. 5 *Rep.* 69. *Burton's Case*; and, I presume, neither Mr. Attorney nor Solicitor, who made this Objection, do think that: Whether this be a Judgment according to Law and Custom of Parliament, is Matter of Fact; then for the Precedents cited by Mr. Attorney, of the Earl of *Pembroke*, the Earl of *Stafford*, the Earl of *Torrington*, and the Lord *Mobun's Cases*, which are all Petitions for Trial, sitting the Parliament, I think no Man who heard them can judge that they any ways warrant this Case or come up to it; for a Peer, indicted for Treason or Felony, can no ways waive his Trial by his Peers, 3 *Inst.* 30. and therefore if he be desirous to be tried sitting the Parliament, altho' the Peers be during the Time of Parliament Judges of the Offence; 4 *Inst.* 23. it is decent and usual for him, to apply to them by Petition for such Trial; but by it he doth not submit his Title to Peerage to their Determination; for That he asserts he is entituled to by his Petition. Neither is the King, I think, bound by their Order, be it what it will, on such Petition; for the King may chuse whether he will appoint a High Steward for the Trial, and without such an Appointment the Offender cannot be tried, 3 *Inst.* 31. And therefore 'till a Precedent be form'd, that on such Petitions for Trial, the Petitioners have been voted no Peers, I cannot be of Opinion, that this Order or Judgment is *Secundum Legem & Consuetudinem Parliamenti*, which hath its Foundation built on Usages and Precedents; and where there is no Precedent to be found, it may warrantably be concluded, there is no such Law or Custom of Parliament. Then as to the Precedent of the Lord *Montjoy's Case*, cited by Mr. Attorney, relating to the Clause in his Patent for Precedency, who was created a Baron, 5 *Inst.* 9. *Case, Pri.* it is nothing to the Case before us; for it is plain, tho' the King by his Prerogative, at the Common Law, might give Precedency to his Subjects as he pleased, yet that Prerogative is now bound by the Stat. of 31 *H.* 8. *Ca.* 10. and if any Question be mov'd in Parliament for the Privilege or Precedency of a Lord in Parliament, it is to be decided by the Lords in Parliament, and so it is expressly resolved in the 4 *Inst.* 363. And for the Lord *Praeton's Case*, I know not how it comes to be made use of for a Precedent of determining Peerage, who had no Creation under the Great Seal, nor ever was a Lord: His insisting on the pretended Patent, produced by him, being a high Misdemeanor bordering on High Treason; for which he was ordered to be presented as a Criminal, in a Course of Law; and for *James Piercy's Case*, it was a Case of Privilege, of which there is no Question but their Lordships have a Jurisdiction, his Petition being to the Place in the House of Lords, of the Earl of *Northumberland*, and submitting to them his Pedigree, and Title by Descent to that Earldom, in order to restore him to that Place; and after several Trials at Law had against him, and the Matter determined in a Course of Law, on solemn Hearing at the Bar of the House on both Sides, on Depositions taken in



the Cause, agitated in inferior Courts, they voted him an Impostor\*, which is very far from being a Precedent of their Lordships Original Determining Right of Peerage, which are all the Precedents which have been cited, and unto which I trust that I have given full Answer; and therefore this Order, here pleaded, being without a Precedent, I am of Opinion, for the Reasons I have given, that the Indictment ought to be abated.

Holt, the Chief Justice, held the Plea good, the Defendant having pleaded the Creation of the Lords his Ancestors, and a plain Descent under them: And for the Earldom, that *Banbury* was averred to be in *England*, he said, it was needless, the Creation being under the Great Seal; the Great Seal of *England* being only peculiar to *England*, for thereby the King acts as King; and had the Grant been made before the Conquest of *Ireland*, without Doubt it had been a good Grant; and the Conquest of *Ireland* cannot alter the Law of *England*; besides, it would be a foreign Construction, to intend *Banbury* in *Ireland*; and a Plea shall not be made bad by such a Construction.

And that the King doth grant Honours in *Ireland*, under the Great Seal of *England*, is by his absolute Prerogative, and therefore there must be Special Words in the Patent, to shew that it is an *Irish* Title; and Patents as well as Acts of Parliament, extend not to *Ireland*, unless it be specially named; but for *England*, they be without any such naming. And he said, That before *Edward* the Third's Time, there were but Two Titles of Honour, Earls and Barons, and the latter were Created by Writs, by being called to the Parliament; there were also Barons by Tenure, and after, in *Richard* the Second's Time; they came to be created by Letters Patent, and it was anciently an Office of great Dignity, as also of Trust, for the Defence of the Kingdom; and they were called *Comites*, a *Societate regis*, 9 *Rep.* 49. and being an Office, might be intailed within the Statute *de Donis*, and they had formerly large Possessions; and for the Relief of an Earl, was 100 *l.* because he died seized *De integro Comit.* 1 *Inst.* 83. But the Estate and Office is now vanished, and nothing but the Dignity, or Title remains; and in these Letters Patent of Creation, in *Henry* the Eighth's Time, the Words to have *Vocem & Sedem in Parliamentis & Consiliis nostris* were added; but before that Time they were not put in these Letters Patent; but he became a perfect Peer by the Letters Patent without them: And as to the Objection, that the Defendant had not pleaded that he was *unus Parium bujus Regni Angliæ*, he said, the Plea was only pleaded as *Misnomer*, in Abatement of his Name; and all one with his Christian Name, and he was to be named by it; but by this Plea he pleaded no Privilege of Parliament, and therefore need not plead that he was *unus Parium*, 6 *Rep.* 53. 8 *Hen.* 6. 9, 10. nor to have concluded his Plea with *verificare per Recordum*, or had a Writ out of Chancery to certify the Truth of this Plea; the Book of 22 *Aff. Pl.* 24. he agreed it to be Law, but misunderstood; for he had not in that Plea laid a

Foundation in his Ancestor's being made Lord; and produc'd a Writ to ascertain that Matter of Record: There can be no Trial of it, nor Plea of *Nul Tiel Record* to it. But notwithstanding the Matters of Record are so ascertained, yet the Matters of Fact also pleaded are issuable, and to be tried; and therefore in the Letters Patent, being here pleaded, there can be no Issue taken of Earl, or not Earl, but only on the Matter of Fact here pleaded: So the Conclusion of the Plea with a *Parat' est verificare*, is proper, and as it ought to conclude; and he held the Replication ill, and that the Order of the House of Lords therein pleaded, did no ways preclude the Defendant of his Title and Name of Honour; and that for these Reasons: First, Because this Determination was not a Judgment, in the Court of Parliament, which consists of King, Lords, and Commons, 4 *Inst.* 1. *Dyer.* 60. *Compton's Jurisdiction of Courts*, 1. And though the Judicial Power of this Court be exercised by the Lords Reply, yet the Writs of Error are returnable *Coram Nobis*, and the Judgment is always *per Cur' Parliamenti*; but the Determination here, is only by the Lords Spiritual and Temporal, which excludes the King; for where the King's Authority is not expressed, or implied, the King is excluded, and the Lords have a double Capacity, and by the Title of their Orders, we are to distinguish what Capacity they act by: When the Determination is by them, as Lords Spiritual and Temporal, they act as a House; but when they act as Judges, and give Judgment, the Stile is, *per Cur' Parliamenti*, and their Journals are not the Records of Parliament, *Hob.* 110. Secondly, This, as to the Determination of the Defendant's being an Earl, is as an Original Cause, which the House of Peers being the Dernier Resort, have no Conuzance of such Causes, being mixed with many Matters of Fact which the House of Peers cannot try; and by Reason of their Supreme Jurisdiction, are not to be troubled with; and therefore no Writ of Error lies in Parliament, for an Error in Fact out of this Court, though it doth on all Judgments here, for any Error in Law: But for any Error in Fact, in this Court, the Writ must be *Coram Nobis*, and we are to correct our own Judgments for such Errors, which the Commons could not their Judgment for Errors in Fact, by any such Writ to be brought before them; but the Writ of Error is to be brought into this Court; and he said, he knew not any other Reason of the Difference, but the Dignity and Supremacy of the Court of Parliament; that it was below that House to be troubled with Facts, and this lessened not the Jurisdiction of the Lords, it being below their Jurisdiction to hold Plea of it; and should they try Causes Original, the Party against whom Sentence is given, would lose the Benefit of his Appeal; for from their Determination, no Appeal or Review lies; and therefore in the Earl of *Macklesfield's* Case, it was held, that no Writ of Error lay in Parliament, 'till he had first brought a Writ of Error in the Exchequer-Chamber; and this Case differs not from Common, the Dignity being Created under the Great

\* This *James Piercy* was a Trunk-maker in the Strand, and publish'd his Case and Pedigree in about 24 Pages in Folio: One of his Arguments to make you believe him a true Descendant of the *Piercys*, was, That he was born with a Mole on his Body (as other of the *Piercys* had been) like a Half-Moon. Vide his Case, P. 16.—The Crescent being the Crest of the *Piercys*, Earls of *Northumberland*.

Seal, and the Descent of it directed by Rules of Law: And if the Defendant had been obstructed in the Enjoyment of his Dignity, his Remedy had been by Petition to the King, *Standford, Prer' 72.* Thirdly, There was no Plea depending in Parliament, containing the Right of Earldom; for the Petition asserts, he was an Earl, and the Judgment is, that he hath no Title to the Honour; and every Judgment must be proportionable to the Demand: And it is plain in this Case, they could not have given Judgment for him, to have had the Earldom, and therefore could not by it have him out of it. Fourthly, Here is no Judgment given, that he be excluded from the Honour, only that the Petition be dis-

miss'd, which is only a discharging the Petitioner; and every Suit must have its proper Judgment, 2 *Car. 284.* and no Man's Inheritance was ever determin'd *Secundum Legem & Consuetudinem Parliamenti.* And my Brother Gregory, and my Brother Eyre, being of the same Opinion, Judgment by the whole Court was given for the Defendant.

And the Defendant remains untried to this Day.

See *Salkeld's Reports*, Vol. II. Pag. 509, & seq. Also *Cartbrow's Reports*, Pag. 297. *Comberbach*, Pag. 273. and *Skinner's Reports*, Pag. 336, and 517. where this Case is Reported at large.

XLVII. *The Trial of William Anderton, Printer, June 3, 1693, before the Lord Chief Justice Treby, Baron Powell, Sir John Fleet, Knt. Lord-Mayor, and Sir Salathiel Lovell, Knt. Recorder, at the Old-Baily, for High Treason.* 5 W. & M.

[As Printed in the Sessions-Paper of that Time. \*]

ON Thursday, June 1, 1693, in the Afternoon, *William Anderton*, Printer, was brought to the Bar, and an Indictment of High Treason was read against him; for that he did Compose, Print, and Publish, Two Malicious, Scandalous, and Traiterous Libels. The First entitled, *Remarks upon the present Confederacy, and late Revolution in England.* The Second, entitled, *A French Conquest, neither desirable nor practicable.*

After the Indictment was read, the Prisoner pleaded *Not Guilty*; and the Court, upon his Request, ordered him a Copy of the Pannel, and gave him till Saturday to prepare for his Trial: Accordingly on Saturday Morning, about Nine of the Clock, he was again brought to the Bar, and the Gentlemen that were Summoned to appear to try the Issue, were called over, and their Appearances Recorded, and the Prisoner had Liberty to make his Exceptions, according to the Prescription of Law, which he did, to the Number of *Thirty-Five*, being the full Number, &c.

The Jurors Sworn, were these Gentlemen, whose Names follow, viz.

<i>Crispe Grainge,</i>	<i>Thomas Ramidge,</i>
<i>Joseph Blisset,</i>	<i>Robert Longland,</i>
<i>Joseph Bowler,</i>	<i>Ralph Hutchinson,</i>
<i>John Hynde,</i>	<i>John Outing,</i>
<i>Robert Hinde,</i>	<i>Samuel Freebody,</i>
<i>Simon Smith,</i>	<i>Moses Colwell.</i>

Then the King's Council open'd the Nature of the Matter of Fact contained in the Indict-

ment, telling them, That the Offence that was contained in it, was High Treason in the highest Degree, viz. The compassing and designing the Death of the King and Queen; and there must be some Overt-Act to discover the Intention of the Man; and that which made the Overt-Act in this Case, was in Composing, Printing, Publishing, and Dispersing of Two Treasonable Libels, as they had heard read to them; in which there was contained the rankest, vilest, and most malicious Treasons that ever could be imagined by any Man to be put into Paper; for he had no other Name for the King, but the *Prince of Orange*; and the Design of it was merely to incite all the King's Subjects to stir up, and raise War and Rebellion against him, and to restore the late King *James.*

After which, the Evidence for the King, were called and Sworn: The first of which was Mr. *Robert Stephens*, Messenger of the Press, who declared, That he had known the Prisoner for above these two Years, to be an Offender against the Government, in printing Seditious Libels, but never could tell where he work'd, 'till on the second Day of May last, spying Two Journeymen Printers, who he had missed from publick Printing-Houses this Half-Year, he followed them, and saw them go exactly into the House of one *Skudamore*, (where the Prisoner was found,) and where he suspected they work'd privately: So having got the Beadle, and another Person or two with him, to assist him, he went to the Door, leaving the others a little Way off, to avoid any Suspicion, &c. When he came to the Door, he first ask'd, What Lodgers

\* The Trial of *Anderton*, as printed in the Sessions-Paper, as also his Trial published by his Friends, are both here inserted, for the Reader's Satisfaction, and they left to make their own Observations on them.



they had; then turning his Head aside, he saw the Prisoner's Mother in the Yard, and she well knowing Mr. *Stephens*, she immediately cry'd out *Thieves*, and came up to him, (her Daughter, the Prisoner's Wife, being with her,) fell upon him, and tore his Hair off his Head, crying out *Murder*; at which Time the Prisoner came out of the House, and fell upon him, and abus'd him in a very uncivil Manner, telling him, he scorn'd to be a Subject to *Hook-Nose*. Then the Beadle and the other Person came to his Assistance, and took the Prisoner, but not without a great deal of Trouble.

Mr. *Stephens*, and the others who were with him, made a particular Search, and in a Chamber, which the Landlady said was the Prisoner's Lodgings, and that he went by the Name of *Williams*, and a Lapidary by Trade, and where he own'd he had been asleep. There they saw him shoving a Bed, which run upon Wheels, close up against a Wall, which gave Suspicion to Mr. *Stephens* to remove it; which having done, there he found a Door which opened with a Latch, and entering a Room, there he found a Printing-Press, Letters, and all other Materials fit for the Trade; and searching further, he found in an old Trunk, a great Quantity of Libels, and libellous Pamphlets, one entitled, *A Caution to the Navy*: Another, *An Historical Romance upon the Wars*: A third, *A Second Letter to the Lord Bishop of Salisbury*; and there was an *Errata*, and an *Esc.* found set in the Press, the very same that were in the Book, call'd *Remarks upon the Confederacy*; and in the Chamber where he lay, there was a Desk, (which Mr. *Stephens* knew well to be the Prisoner's, because he had seized it before,) in which Desk there was found the Two Libels, (as in the Beginning of the Trial,) and divers others of the same Sort, which Desk the Prisoner own'd to be his. These they seized and secured, having first put their private Marks upon the Libels, that they might know them to be the same, and convey'd them with the Prisoner to the Lord Chief Justice *Holt's* Chamber in a Coach; and being alighted at the Door, whilst Mr. *Stephens* was looking Money to pay the Coachman, the Prisoner made his Escape through *Serjeants-Inn*, but was soon overtaken by the Porter: He was examined by my Lord, and committed to *Newgate* for High Treason; this was fully and clearly prov'd against him on the King's Side, and the Libels were some Part of them read in Court, in which was found Abundance of base, vile, scandalous, and traitorous Expressions, enough to make any honest *Englishman* to hate and abominate all such traitorous, disaffected Principles. That Libel, call'd *A Caution to the Navy*, which was taken in the Printing-Room, was prov'd to be Corrected by the Hand of the Prisoner; and those Letters that were in the

Form, upon which the *Caution to the Navy* was printed, was also proved to be printed with one and the same Letter and Character, &c. as the Libels he was Indicted for.

Then the Prisoner made his Defence, telling the Court, That the Matter that was given in Evidence against him, was not sufficient to make it an Overt-Act, therefore could not be adjudged High Treason, praying, That he might have Council allow'd him to plead it, being a Matter of Law. To which he was answer'd by the Court, That the Question was, Whether he printed those treasonable Books? Which plainly appear'd that he did, for they were all found (with the Press also) upon him, and his so printing of them was an Overt-Act, in the Judgment of the Law; therefore the Person so offending must be guilty of High Treason; desiring him, if he had any Witnesses, to call them; to which he replied, That he had none, but desired that he might have Leave to put the Jury in Mind of two or three Things, which, in General, was, the Opinion of my Lord *Coke*, as to Matter of Law in this Case, who says, *That it must be done with the Intention of the Mind, and that it must be some Injury done to the King's Person, by buying a Gun, or Gunpowder, or Poison, or the like, before it can be accounted an Overt-Act*; and there was no such Thing proved against him. To which the Court replied, That in primitive Times, before Printing was invented, Writing was found to be an Overt-Act, and made High Treason; therefore Printing was more manifestly an Overt-Act: And there was no Room for any Council to be assign'd him, for there was no Matter of Law for them to plead to, and therefore desired him not to give the Court any unnecessary Trouble. Adding, That it was the Opinion of the whole Court, that he had no Grounds for such a Plea; but if he had any thing to offer, that might be any ways advantageous to him, they would very patiently hear it.

Then the Lord Chief Justice *Treby* summ'd up the Evidence to the Gentlemen of the Jury, telling them what dangerous Consequence such treasonable Libels were of; and that it was as great and malicious a Treason as ever could be imagin'd; but especially when consider'd to be done against so good a Prince, who had done so much for this Nation, with so great a Mind, and so good an Intent. This was done only to exasperate and to stir up Sedition and Rebellion amongst us; therefore, if they did believe what the Witnesses for the King had sworn, to be sufficient Evidence, that he printed the Libel, then they must find him guilty, otherwise acquit him.

Then the Jury having withdrawn for about *Three Hours Time*, they brought a Verdict, That the Prisoner, Mr. *William Anderton*, was Guilty of High Treason. \*

\* The Author of *A Letter concerning Sir William Whitlock's Bill for regulating of Trials in Cases of High Treason*, written 1693, Page 1. says; "What good *Englishman* is not afflicted for the Death both of *Essex* and *Raleigh*? Can any Man that knows our Laws, think Sir *Henry Vane* was fairly dealt with? That *Plunket* ought to have been tried Twice? *Sidney* executed upon Similitude of Hands, and one Witness? Sir *Thomas Armstrong* without a Trial, before the Outlawry compell'd his coming in? *Ashton* upon presumptive Treason? And *Anderton*, against the plain Sense of so many Statutes? The Blood of these, and many more, cry for Vengeance, and admonish us to provide against such Extravagancies hereafter. *Colledge* and *Cornish* call aloud for such a Bill. Had such a Statute been in Force, could the great Lord *Russel* have dy'd for only endeavouring to prevent the wild Attempts of others? and because Sir *Thomas Armstrong* had view'd the Guards? But it is needless to set down the several Instances in other Reigns, when the Trials under this, afford but too pregnant Reasons to conclude the Judges very untoward Council for the Prisoner, and that Jurymen may be byas'd by Piques and Animosities; and also that well-meaning Men of a Jury ought to hear the Law stated by such of the Robe as are not in the Pay of the Crown; not only because the Bench too often prevaricates, but because the Prisoners are often wearied out, as the great *Raleigh* was, with the clamorous Harangues of the King's Council, and so drop their Defence, when their Lungs (which are not so well breath'd as those of Pleaders) fail them."



The last Day of the Sessions he was brought to the Bar, and asked, What he had to say, why Sentence should not pass upon him according to Law? He read a *Petition*, wherein he desired the Court would please to allow him Council to plead to a Point of Law; the Court told him, there was no Matter of Law did arise. Then he desired, that he might have a longer Time than the rest, to which he was answered; That it was in the Power of the Queen, and not in the Court.

Friday, June 16, 1693, he was executed.

Mr. Samuel Smith, the Ordinary, gives this Account of Mr. *Anderton*, in his Account of the Behaviour of the Criminals.

*William Anderton*, Printer, condemned for High Treason, in composing, printing, publishing, and dispersing malicious, scandalous, and traitorous Libels: The Design of it being to incite the King's Subjects to War and Rebellion against him, and to restore the late King *James*. He refused to come at any Time to the Ordinary; whereupon he went to the Chamber of the said *Anderton*, and offered to pray with him, but he said, *That he had such came to him, who gave him Contentment*: And after a second Offer to pray with him, he refused it. The Ordinary told him, That he ought to take Care, that no Man might extenuate his high Crimes, nor flatter him with false Hopes of Heaven, Men's Hearts being very prone to deceive themselves in that Respect; upon which *Anderton* said, *Leave me to myself, I desire not to be further solicited, or exhorted by you*. Upon this the Ordinary withdrew himself.

*William Anderton*, for High Treason, and *John Dudley*, for Clippings, were drawn on a Sledge to *Tyburn*, and were first executed. The Right Worshipful the Sheriffs being present, *Anderton* desired that his Brother and a Minister, his Friend, might come into the Cart, which was granted. The Minister only prayed for him in the Office of Visiting the Sick: When he had finished, and went out of the Cart, the Ordinary exhorted *Anderton* and *Dudley* to beg of God, that they might be Examples of true Repentance, and to warn the People by their sad untimely End, but they did not, therefore the Ordinary commanding Silence, spoke thus. Be persuaded by the Sight of these dying Persons, not to contrive any thing against the Government of this Kingdom; God will bring it to Light, and in Justice punish it; and exhorted the People not to prophane the Sabbath, which all Criminals bewail when they come to die publicly, as that Sin which brings on all other Crimes. *Anderton* told the Spectators, that his Sentence was very hard and severe; I told him, that he had endeavoured to overthrow the established Government. He said, that he forgave his Judges; I replied, that they needed not his Forgiveness, for they were satisfied in their Consciences, that they had acted justly. Then I prayed with them, and they had a considerable Time to pray for themselves, which they did fervently. *Anderton's* Carriage was with much Confidence. There was a Paper came to the Sheriff's Hand, for the suspending the quartering of *Anderton*. He thought it to be a Reprieve, which did much affect him with Thanksgiving to God; but understanding it was only that his dead Body should be delivered to

his Friends, he did not acknowledge that as any great Favour. After they had prayed for themselves, the Ordinary committed them to God's Mercy, with a short Prayer at last: So praying again for themselves, they gave a Sign, when they expected to be executed; and the Cart thereupon drew away.

The TRIAL of *William Anderton*, Printer, at the Old-Baily, before the Lord Chief Justice Treby; Mr. Justice Powell; Sir John Fleet, Knight, Lord Mayor, and Sir Salathiel Lovell, Knight, Recorder of London. June 1, and 3, 1693. 5 Will. & Mar. for High Treason. \*

MR. *William Anderton* knowing himself to be mortally hated, by some Persons, had absconded for a considerable Time, as it has been the hard Fortune of divers great and good Men to do in these difficult Times; but being betrayed to Mr. *Robert Stephens*, Messenger of the Press; and his sworn Enemy, he was apprehended on the second of May, this present 1693, and *Stephens*, not content with his Person, plainly plundered the House, carrying away Goods to a considerable Value, which there was no colour of Law for him, or any Man else to seize; and this I suppose might be one great Motive to make him swear so desperately at the Trial, that he might take away a Man's Life, who otherwise might come upon him for robbing him of his Goods; the Booty secured, away he goes, in Triumph with his Prisoner, to my Lord Chief Justice *Holt*, where he railed against him in a very indecent Manner; the Judge was very calm, and said very little to the Matter, but, upon the Accusation, committed Mr. *Anderton* to Newgate, not for High Treason; as is falsely alledged; that Judge knew the Law better, and, I believe, is not in himself so very forward to over-strain it. Whilst he thus stood committed for Misdemeanour, he was bailable; and accordingly very sufficient Bail was offered for him; but *Aaron Smith*, who wisely weighs what Advantage is to be made of every Prisoner, and considers not only the Person himself, but the Interest he is engaged in, and the Friends he may be supposed to have, thought too few Guineas were offered; and therefore still kept off the Bail, endeavouring to make a better Market; but while Things hung thus between the Bail and the Bail-master, on a sudden the Controversy was ended by the coming of a fresh Warrant upon the former, which committed the Prisoner for High Treason.

The Trial began Thursday, June 1, but respited 'till the Saturday following, (June 3,) that this Scene might be acted with the greater Solemnity; Mr. *Anderton* being brought to the Bar, was arraigned, and pleaded Not Guilty, and made it his Request, That he might have a Copy of his Indictment, but it would not be granted. The Crime laid to his Charge was,

The Composing, Printing, and Publishing, Two malicious treasonable Libels: The First entitled, *Remarks upon the present Confederacy and late Revolution in England*; the Second, *A French Conquest, neither desirable nor practicable*.

The principal Evidence against the Prisoner was *Robert Stephens*, the Messenger of the Press,

\* Taken chiefly from a Quarto Pamphlet, entitled, *An Appeal of Murder, &c.* wrote by Mr. *Grafcomb*, a Nonjuror. But Mr. *Anderton* was assisted in his Defence by Mr. *Thornbury*, a Counsellor at Law, who, it's suppos'd, drew his Plea, Petition, &c.



who made Oath, That coming to *Scudamore's* House, where the Prisoner lodged, and asking what Lodgers they had, he saw the Prisoner's Mother in the Yard, who crying out Murder, the Prisoner came out of the House, and fell upon him; and that at the Time of Mr. *Anderton's* Apprehension, he did in Words disown the Government, and call'd King *William* Hook-Nose, not submitting himself: That he took at the said House an old Trunk fill'd with seditious Papers and Pamphlets, and that he had seen the Trunk formerly, and knew it to be Mr. *Anderton's*, and that he also found a Desk, and took out of the said Desk Forty or Fifty of a sort of *The Remarks*, and *French Conquest*; \* and that he saw the Prisoner shove up a Bed, which run upon Wheels, behind which was a Door, which he open'd, and there found a Printing Press, Letters, and other Materials proper for that Trade; that he also found an *Errata*, with an, &c. set in the Press, the very same which he believed were in the Book, call'd *Remarks upon the present Confederacy*.

*Hooper*, the Beadle of Stationers-Hall, seconded the aforesaid Testimony, as also the Constable and his Beadle; they also alledged Forty or Fifty of the *French Conquest* to be there. † Besides *Stephens*, the Constable, and the Beadles, there were also Two Printers sworn, viz. *Roberts*, and *Snowden*, (a Dissenter, to whom *Anderton* was some Time an Apprentice,) the Substance of whose Evidence was, That they had seen the Characters in the Hall, together with the, &c. and that they did believe it was the Letter that printed that Book, (i. e. the Book then shewed in Court,) as also, That the two Books were printed with one and the same Letter or Character. § Another Witness made Oath, That about three Quarters of a Year before, he had fold the Prisoner Paper, by the Name of *Williamson*.

\* As to the latter of these, it is now certainly known, that he had no Hand in it, and that it was printed at a Press which he never saw, and by Persons with whom, for a long Time, he had no Communication: For the Government had at that Time in their Custody those Persons, who knew when and where it was printed, and (as it was said) had made a Discovery of all, perhaps, of more than they knew. The Papers of that Sort taken upon the Prisoner were sent to him the Day before he was seized: And some have a vehement Suspicion, that it being resolved he should be taken the next Day, those Pamphlets were sent before-hand, that something might certainly be found upon him; but his Innocence in that Matter hath since been made evident to all the World, by an irrefragable Testimony; for this September Sessions at the Old-Baily, *Price*, in open Court, made Oath, That he, and the Prisoners then at the Bar, *Newbold* and *Butler*, printed the *French Conquest*. *Appeal of Murder*, pag. 6.

† It is certain, there was not the fourth Part of so many in the House, which were sent him the Day before, and which the Government itself now (if it did not then) well knows were not printed by him. And yet after all this Multitude they were content to fall to one of each, that they might be particularly sworn to; and when Mr. *Constable* was asked, How he knew those to be the Books, and was desired by the Prisoner to read the Titles of those Books whereof he accused him, truly it appear'd, that the Gentleman had been bred to no such dangerous Things as Writing or Reading. Now could a more unquestionable Witness have been produced to printed Books, and their Titles, than a Man that cannot read? But for a Help at a dead Lift, it was said, That he had made his private Mark on the said Books; but then it ought to be consider'd, That his private Mark was made to the Two Books at the Lord Chief Justice *Holt's* Chamber, which *Robin Stephens* produced out of his Pocket, when the Prisoner was brought to be examined. Now what did his Mark, set on Two Books at the Lord Chief Justice's Chamber, which were all the while before in another Man's Custody, signify to prove that those were the Books, which were about four Hours before taken out of a Desk in St. *James's*? *Robin Stephens* might have produced what Books he pleased, and in all Likelihood, this Man would have set his private Mark on them; but if he would have been sure, he ought to have set his private Mark at the Time of their being taken out of the Desk. See *An Appeal of Murder*, Pag. 11 and 12.

§ Now if this Evidence be true, it ought to have acquitted him; if it be false, it ought not to have hurt him. For the Government well knows where and by whom one of the Books was printed, and that it was not printed by Mr. *Anderton*, nor had he any manner of Hand in it, or any Communication at that Time with those Printers; and if both the Books were printed with the same Letter or Character, then I think it is a pretty fair and clear Inference, That he printed neither of the said Books, and consequently ought, upon this Evidence, to have been discharged. But be the Matter true or false, what signifies believing in this Case? Is one Man to be hang'd for another's believing? Malice is put to its Shifts, when without any Colour of Legal Evidence it is forced to believe a Man out of his Life. But if such Evidence as this shall be look'd on as good and satisfactory in Matter of Life, I think the whole Society of Printers are deeply concern'd in it, and that they are all in very dangerous Circumstances; for I am assured by a very understanding Printer, that there is not a Printing-House in Town, but hath of the same Sort of Letter or Character, so that upon such an Oath as this, any or all the Printers of the Town might have been taken, and whom they thought fit hang'd. For there is none of them but had Characters as suitable to the Book, as that which was sworn to; and if it had been seized, and thus sworn to, they were as liable to be hang'd as *Anderton*. At this Rate the Government need not give themselves the Charge of a Messenger of the Press, nor the Trouble of such frequent Searches; but as soon as any Seditious or Treasonable Pamphlet comes abroad, it is but going to the next Printer's, and seizing his Letter, and having found some of the same Sort of Character, to get a Couple of Rattle-headed Fellows to swear it, and hang him; and thus they may pick and chuse what Printers they please to hang. Was ever such a wise Oath made by Two Printers? But *Snowden* was made Choice of, for his notoriously known Malice against the Prisoner. See *An Appeal of Murder*, P. 13 and 14.

The Prisoner, with a great deal of Calmness, and Clearness, made appear the Insufficiency of the Evidence: He peremptorily denied any such Books to have been there, as sworn to, tho' he own'd the Desk; and he used an Argument to convince the Bench of the Truth of what he said, drawn from the very Evidence given against him, viz. That the Desk was small, and not able to contain half so many Books as were sworn to be taken out of it; and for Proof, desired that the Desk might be brought into Court, for the Jury's Satisfaction; but this Request was not comply'd with, and the Matter put off, saying, The Number of Books was only Matter of Supposal. But then from this false Supposition of the Proof of Matter of Fact, there arose Matter of Law, viz. Whether Printing were Treason? And in consequence hereof, Whether it were within the Purview of the Statute of the 25 *Edw.* 3. To this, the Prisoner desired he might have the Benefit of Council, and pleaded his Right to it, urging not only the Privilege of every *Englishman*, but that it was the Practice of all our Courts of Justice, and that no Man was denied Council where any Matter of Law arose, and instanced in the Case of *Sidney*, and others, to whom the Judges freely and readily assigned Council as to Matter of Law, and own'd it to be their Right. But the Court peremptorily denied to him, what was (as the Learned in the Law tell me) never denied to any Man before; Council as to Matter of Law. Being thus shamelessly over-ruled, he was constrain'd to be his own Council, and deliver'd in the following Plea.

Mr. *Anderton's* PLEA at the Old-Baily.

My Lord,

I HAVE a few Things humbly to offer to your Lordship's Consideration, as to this Indictment.



1. As to the Compassing, or Imagining the Death of the King and Queen, my Lord Coke saith expressly in his 3 *Inst.* p. 6. That it is the very Rule of the Act; that *Actus non facit Reum, nisi Mens sit Rea*; and if the said Act be not within the expresse Words of the Act, then by Force of a Clause hereafter, viz. *Et per ceo que plures auters ne*, it cannot be adjudged Treason, until it be declared Treason in Parliament; which is the Remedy which the Lawmakers have provided in that Case.

2. As to the Levying War, *he says*, p. 9. That a Compassing, or Conspiring to Levy War is no Treason; for there must be a Levying War in *Facto*. Pag. 10, *he says*, In citing the Lord Dyer's Case, in Sir N. Trogmorton's, that during the Life of the Queen, viz. *Eliz.* a Conspiracy to Levy War was High Treason, tho' no War Levied: But when *Bradshaw* and *Burton*, and others, were Indicted of High Treason, for Conspiring to make War, it was resolved by all the Judges, that it was no Treason within the 25 *Ed.* 3. for the Words in this Law are *Levée Guerre*: An Actual Rebellion, or Insurrection, is a Levying War within this Act; as if any with Strength and Weapons invasive and defensive, doth hold and defend a Castle or Fort against the King and his Power; that is Levying War within this Statute.

3. Adhering to the Enemies of the King and Queen. This, my Lord, in the same p. 10. he likewise explains; viz. in giving Aid and Comfort to the King's Enemies within the Realm, or without, Delivery, or Surrender of the King's Castles, or Forts; by the King's Captains thereof, to the King's Enemies within the Realm, or without, for Reward. This, *says he*, is adhering to the King's Enemies, and declared Treason by this Act: And for this, my Lord, he cites several acknowledged Authorities and Acts of Parliament.

4. As to the Proof of these, or any of these Particulars, the said Lord Coke, p. 12. explaining this Branch of the Statute, *Et de ceo Provablement soit attainé per overt Fait per gens de lour Condition*, saith thus; which, Gentlemen of the Jury, I beg of you take particular Notice of. In this Branch, saith he, four Things are to be observed; but I shall only take Notice of three, first, this Word *Provablement*; probably, i. e. upon direct and manifest Proof, not upon conjectural Presumptions, or Inferences, or Strains of Wit; but upon good and sufficient Proof. And herein the Adverb, *Provablement*, probably, hath a great Force, and signifieth a direct and plain Proof; which Word, the King, Lords and Commons in Parliament did use, for that the Offence was so heinous, and was so heavily and so severely punished, as none other the like; and therefore the Offender must probably be Attainted; which Words are as forceable as upon direct and manifest Proof. Note, saith he, The World is not *Probably*, for the *Commune Argumentum* might have served; but the Word is *Provably* be Attainted: And pag. 26, he tells us, That Two Witnesses are required, and I remember, saith he, no Authority in our Books to the contrary; and the Common Law herein is grounded upon the Law of God, exprest both in the Old Testament and the New. *In ore duorum aut trium Testium peribit qui interficietur. Nemo occidatur uno contra se dicente*

*Testimonium*, M. Brañ. Fortes. 1 E. 6. 5 E. 6. 11. Secondly, This Word *Attainé*, necessarily implieth that he be proceeded with, and attained according to the due Course and Proceedings of Law, and not by absolute Power, or by other Means, as in former Times hath been used. Thirdly, *Per Overt Fait, per apertum Factum*. This, saith he, doth also strengthen the former Exposition of the Word *Provablement*, that it must be provably by an open Act, which must be manifestly proved; and this manifest Proof he thus explains: As if, saith he, divers do conspire the Death of the King, the Manner how, and thereupon provide Weapons, Powder, Poison, Assays with Harnefs, or sending Letters to put this their Conspiracy in Execution. These, *Gentlemen of the Jury*, are the Expositions of the unexceptionable Lord Coke, whose Authority I the rather chose to rely on, because his Learning in the Law, and his Veracity in the Delivery of his Opinion; is universally acknowledged.

5. As to the Fact alledged in this Indictment, which is to prove the aforesaid Crime, or otherwise the whole Indictment falls to the Ground; and that, my Lord, is Printing. Now the Question is, my Lord, Whether Printing; as such, can be construed to be within the Purview of this Statute? And I humbly conceive not; because the Statute of 1 *Mary* Enacts, That no Act, Deed, or Offence, being by Act of Parliament, or Statute made Treason, Petit Treason, or Misprision of Treason, by Words, Writing, Ciphering, Deeds, or otherwise whatsoever, shall be taken, had, deemed, or adjudged to be High Treason, Petit Treason, or Misprision of Treason, but only such as be declar'd and exprest to be Treason, Petit Treason, or Misprision of Treason, in, or by the Act of Parliament made in the 25th Year of the Reign of the Most Noble King of famous Memory, King *Edward* the Third, or any other Declaration, or Matter, to the contrary in any wise notwithstanding. Now, my Lord, the World well knows, that Printing was not practised in *England* till several Hundred Years after the making of this Statute of 25 *E.* 3. and therefore impossible to be exprest, and consequently not Treason. And it is likewise well known, that Printing was in Use in *England* long before the Reign of Queen *Mary*, and yet this Statute positively excepts it, as not being mentioned in that of 25 *E.* 3. And my Lord Coke, p. 23, says, That before this Act of 1 *Mary*, so many Treasons had been made, and declar'd by Parliament, since that of 25 *E.* 3. some in particular, some in general, and in such sort Penn'd; that not only the Ignorant, but the Learned were many times trapt and snared, and Treasons made in one King's Reign were abrogated in another. So that the Mischief before 25 *E.* 3. of the Uncertainty what was Treason, and what not, became so frequent and dangerous, that the safest and surest Remedy was by this excellent Act of 1 *Mary*, to abrogate and repeal all but such as are specified and exprest in this Statute of 25 *E.* 3. By which Law, saith he, the Safety of the King and his Subjects is wisely and sufficiently provided for in such Certainty, as *nihil relium est arbitrio Judicis*. And p. 21, explaining the Words, *Semblable Treason*, he says, In this Case the Judge shall not judge *a simili*, or by Equity, Argument,



ment, or Inference of any Treason, High, or Petit, for no like Case shall be adjudged Treason, High, or Petit, nor no other Case, though of as high, or higher Nature, shall be adjudged Treason, High, or Petit, as appeareth in the Case of Parricide. And p. 22, explaining this Branch, *Que nest specifiquement*: This Word *specifiquement*, saith he, is to be specially observed; for it is as much as to say, particularis'd or set down particularly, so as nothing is left to the Construction of the Judge, if it be not specified, or particularis'd by this Act. And, my Lord, he breaks out into this Rapture, *A happy Sanctuary for Judges to fly to, that no Man's Blood, and Ruin of his Family, do lie upon their Consciences against Law!* And if that the Construction by Arguments *a simili*, or *a minori ad majus*, had been left to the Judges, the Mischief before this Statute would have remained; viz. Diversity of Opinions, what ought to be adjudged Treason, which this Statute hath taken away by express Words. And the Statute, 1 Mary, doth repeal all Treason, &c. but only such as be declar'd and express'd in this Act of 25 E. 3. wherein this Word, *Expressed*, is to be observed. And again, my Lord, on the Branch, *Tanque per D'evant le Roy & son Parlement*. By this, saith he, it is apparent, that any like Case, or other Case, ought to be declared by the whole Parliament; and so it was done by the whole Parliament in 3 R. 2. and many other Acts of Parliament. Nay, p. 24, he says, that no former Judgment, Attainder, Precedent, Resolution, or Opinion of Judges, or Justice, of High Treason, Petit Treason, or Misprision of Treason, other than such as are specified, and express'd in the said Act of 25 E. 3. are to be follow'd, or drawn to Example; for the Words are direct and plain, that no Act, Deed, or Offence, &c. shall be taken, had, deemed, or adjudged to be Treason, Petit Treason, or Misprision of Treason, but only such as be declared and express'd in the said Act of 25 E. 3. any Act, Statute, Declaration, or Matter to the contrary notwithstanding. But now, my Lord, to come a little nearer to the Matter: How can bare Printing be deemed in Law an Overt-Act of compassing, or imagining the King's Death? (which is the Treason alledg'd,) when 'tis so far from necessarily proving it, that it is ten times more natural to suppose that the Printer, (whoever he be,) prints for his Gain in his Way of Business, than out of any intendedly Treasonable Design. Besides, in Treason Books, the Law ever look'd severely after the Author, or Procurer, but very little, or not at all regarded the Printer as such, being look'd on in Law as a meer Mechanick, till the Statute 13 and 14 Car. 2. c. 33. which makes it an Offence, and allows the Punishment, which is for the first Offence, Disability for following the Trade for three Years; and for the second, a perpetual Disability and a Fine, Imprisonment, or other Corporal Punishment, not extending to Life, or Limb. My Lord, the very Stile of the Act is, *An Act for preventing Abuses in Printing Seditious, Treasonable, and Unlicensed Books and Pamphlets, and for Regulating of Printing, and Printing-Presses*; which plainly shews, that the Government was at a Loss how to punish Printing, as such, before; which the Government could not have been at, if the Printer had stood charge-

able before, for Matters and Things contained in the Books and Pamphlets he printed. Nay, my Lord, the very Statute of 13 Car. 2. c. 1. which made several Things Treason during his Life, did not, as I conceive, extend to the Printer, but to such as should procure to be printed the Treasons therein contained. I have but one Thing more, my Lord, to urge upon the Matter, and that is the Case of *Algernon Sidney*.

In short, he acquitted himself so well, that all indifferent Persons were abundantly satisfied, and yet it proved to no more Purpose than a *Wall-Lecture*.

In summing up the Evidence, two or three old musty, impertinent Precedents were brought in, which had not seen the Sun for many Ages, the Chief of which was that of Sir *John Oldcastle*, Lord *Cobham*, and he might as well have urged the Case of the *Man in the Moon*: For what was my Lord *Cobham's* Case to Printing? That famous *Wicklevite* lived in the Reign of *Richard the Second*, some Scores of Years before Printing was thought on, which came not into *England* till the Reign of *Henry the Seventh*; and the Prisoner had very well observed, That what is not expressed in the Statute 25 Edw. 3. (and it is impossible Printing should be expressed there,) is barr'd from being any ways adjudged, or interpreted Treason, by the Statute, 1 Mary. In short, in summing up the Evidence to the Jury, every thing was aggravated to the utmost, every little Punctilio was made use of, which was thought might be any thing serviceable to beget in the Jury an hard Opinion of the Prisoner; the Bed with Wheels was not let alone; every little Trifle was fetched in, with all the witty Malice imaginable; nay, the very Soul of the Man was looked into, and the Jury told what was within him; he was an ill-minded Man, a disaffected Person; he was no Lover of the Government; and that *Printing was an Overt-Act*: So the Jury were sent out to consider of their Verdict.

After two Hours Debate, the greater Part of the Jury became very well inclined to have found *Not Guilty*; but there was one amongst them who loved Mischief, and he was for hanging Men for being *Jacobites*, not for being *Guilty*: And being since told of the Severity of their Verdict, he readily acknowledged, *That the Evidence did not amount to the Proof of the Fact; but, saith he, What of that? I believed he was guilty, and I will hang a hundred of them for Half so much Evidence.*

When the Jury appeared, the Question was asked, *Whether they were agreed of their Verdict?* A zealous Man answered, *No*. Whereat the Court frowned, and shewed themselves much displeased, when the Foreman of the Jury, (desirous that all Men may have fair Play for their Lives,) put this Question to the Bench, *Whether the having those Things by him, without making any further Use of them, did affect the Prisoner as to Life?* Now this Question was very pertinent, though nothing pleasing; but after some frowning and pouting, the Court answered, *No*. But that was not their Business, they were to find it Printing, and that was a sufficient Overt-Act.

Some of the Jurymen, by way of Complaint, said thus: *My Lord, our Foreman is of Opinion,*  
this



this Fact is not proved. Court. Whether it be proved or no, you ought not to determine; the bare finding the Books in his Custody would not be Treason; but the Case is, Gentlemen, here is a Man that has a Printing-Press, to which no Man has Admission but himself; and this Man is found with an Errata, and &c. so that he must needs print the Treason. To this a Juryman answered, 'Tis a very strong Presumption, my Lord. And then Baron Powell clenched the Nail with this grave Saying, A violent Presumption is as much as if a Man had been there and done it himself.

These Answers being returned to the Questions, the Jury were sent back again, where almost three Hours more were spent in debating the Matter, before they could come to a Conclusion, and then complied, and brought in the Prisoner Guilty. The Court told them, That they had done like honest and good Men, and had brought in a Verdict agreeable to their Evidence. \* Sentence according to Course, was put off to the last Day of the Sessions; in the mean Time the Prisoner, that he might either save his Life, or leave those who fought his Blood without Excuse, had a Petition drawn and delivered, which is as followeth.

To the Right Honourable Sir John Fleet, Lord Mayor of the City of London, and the rest of the Commissioners, for the Goal Delivery of Newgate.

The humble Petition of William Anderton, a Convicted Prisoner in Newgate.

Sheweth,

THAT whereas your Petitioner has been by the Jury found Guilty of Printing the Books laid in the Indictment, and thereby is concluded from Questioning the Legal Evidence they had for it, though your Petitioner humbly appeals to your Lordships Observations and Consciences, whether all that was Sworn, came up to more than bare Circumstantial Evidence of his bare Printing them; which in Cases of Treason, as your Petitioner is informed, has never been allowed. And whereas your Petitioner was advised, That bare Printing these Books, (admitting the same was proved,) could not by the Laws be construed as an Overt-Act of Treason in the bare Printer; And your Petitioner requested the Court again and again, That this Matter might be argued by his Council, which the Court were pleased not to permit. Your Petitioner yet notwithstanding, not doubting of your Lordships Inclinations, not only to do him all Justice, but to shew him all the Mercy and Favour you can, that may consist with your Lordships Justice; and humbly conceiving, That this Court, by further considering your Petitioner's Case, may, even yet, be capable of Relieving your Petitioner, especially,

if upon hearing what your Petitioner can say, your Lordships shall be satisfied, That your Petitioner happened to be Convicted through any Error or Mistake, (as no Man was ever exempt from Error, and the best of Men are always readiest to confess it.) Your Petitioner therefore humbly beseecheth your Lordships Patience, seriously to read and consider some few (of many) Reasons which your Petitioner hath heard from others, which he herein has set down as briefly as he can, as followeth. First, They lay down, that the Treason laid in the Indictment, being that of the Intent of the Heart, (expressed in the Statute, by Compassing and Imagining the King's Death,) requires by Law Two Proofs, the one of the Fact, the other of the Inference, and that both these must be plain: That of Fact, (called the Overt-Act,) must be proved by direct and positive Evidence, by Two Witnesses at least, and not by Circumstantial only, (as this of Printing was against your Petitioner, there being no positive Proof at all, not so much as by One Witness, given of his Printing either of the Books laid in the Indictment.) And then, that of Fact being thus proved, must by Necessity of Inference as evidently and certainly prove, That the Party in doing such Overt-Act, could intend, or imagine thereby nothing less than the King's Death: And if either of these Proofs fall short of such necessary Certainty, such Indictment must fail, the Law, for great Reasons, regarding only such plain and direct Proofs in these great Charges.

Now, can a Printer, *Quatenus*, only the Printer of these Books, be thereby inferred to Assent to, and Approve of the Matters and Things contain'd in these Books, and that necessarily too, *Quatenus*, the Printer? By the same Legal Logick, every Printer may be proved to have in his Heart, and approve of all the Opinions, Notions, and Imaginations, contained in all the Books he ever Printed: For a *Quatenus ad omne valet Consequentia*.

'Tis true, (say they,) Writing and Speaking have, in some Instances, been accounted as Overt-Acts, and there might be good Reason for it, as a Man expressing his own Mind by his own Writing, and by his own Words, which, according to the Manner of his Writing, or Speaking, may evidently appear to come from his own Heart: And your Petitioner doth not doubt, but that the Writing a Book, as in Cardinal Poole's Case, and the Signing the Warrant for the Execution of King Charles the First, as in the Case of the Regicides, which Cases were urged by some of the Court against your Petitioner, were sufficient Overt-Acts, to prove the Compassing and Imagining the King's Death. But can these Instances be any thing to the Case of a Printer? whose Business it is, as a

\* "For Anderton, who is the last that since the Revolution hath been Executed for High Treason of this Kind, there needeth no more to shew both the Perjury of the Witnesses that Swore against him, and the Severity and Hastiness of his Conviction and Condemnation, than that a Person Arraign'd, and Condemned since at the same Place, hath openly confess'd and avow'd, that he Printed and Published the Book, for which Poor Anderton was Cast and Executed. Nor is it for the Credit of those that Sate as Judges, or were upon the Jury, that so infamous a Fellow as Stephens, was the Principal Witness at the Trial, and the Person upon whose Testimony especially the Arraigned was Cast: For, besides his being universally known for a Rascal, that will be purchas'd to perpetrate any Villainy, provided he may find Impunity in doing it, his whole Behaviour at that Time, when he gave his Evidence, was so excessive rude and rancorous towards the Prisoner, as might give any indifferent Man a just Cause to believe, that he was provok'd by Malice, or sway'd by Command, and encouraged by Reward, to what he did." See a Letter to the Right Honourable Sir John Holt, Knt. Lord Chief Justice of the King's Bench, occasioned by the Noise of a Plot. The Second Edition, 1694. Page 8 and 9.



"Printer only, to print the Thoughts of others, being accounted in Law only as a meer Mechanick, and whose End thereby is to get Money for his Work. And for further Reason in this Matter, they observe, That as it doth not appear that bare Printing was ever pretended to be an Overt-Act within Stat. 25. Edw. 3. so when the Parliament of 13 Car. 2. carried up Treason to the highest, for the Preservation of the King's Person during his Life, and (among other Things,) particularly therein took Notice of Printings, yet would they not thereby lay so great a Penalty upon the Printers, as, no Doubt, considering the Unreasonableness of Comprising such Tools and Mechanicks, within an Act intended for Persons of higher Designs: But this Parliament kept the Printers in their Remembrance, as intending to consider them by themselves in another Act, as they very soon after did; for the same Parliament, in 13 and 14 Car. 2. made an Act, which they stile, *An Act for preventing Abuses in Printing Seditious, Treasonable, and Unlicensed Books and Pamphlets, and for regulating Printing and Presses*; and therein, as they fix them their Rules and Bounds, so they allot them their Punishment: Which, for the first Offence, is Disability for three Years; and for the second, perpetual Disability, Fine, Imprisonment, or other Corporal Punishment, at Discretion.

"Wherefore, the Premises thoroughly weighed and considered, your Petitioner humbly implores your Lordships, That, in Favour of Life, in a new and extraordinary Case, and that too, of High Treason, your Lordships would be pleased to extend so much Mercy to your Petitioner, as to suspend your Judgment, and pronouncing Sentence upon him, until your Lordships shall have heard what can be further offered by Council on his Behalf.

*And your Petitioner shall ever pray, &c.*

This Petition speaks for itself: When the last Day of the Sessions came, and the Prisoner was asked in Course what he had to say, Why Sentence should not be passed upon him? He desired that his Petition might be read; but the Court not being willing to take Notice of the Knowledge of any such Petition, thereby to elude his Request, he foreseeing it, had provided one ready, and offered it to be read, but no Man daring to take and read it, he took the Freedom to read it himself, and then offered these Things further in Arrest of Judgment.

#### *His Plea in Arrest of Judgment.*

My Lord, In Arrest of Judgment, I have these Things humbly to move.

1. Whether if a Jury, not being competent Judges of the Matter of Fact whereof they are to judge, and bring in their Verdict against the Defendant contrary to Law; I say, whether Judgment ought to pass upon the Defendant because of that Verdict?

2. Whether if a Judge, (who is Council for the Defendant, and therefore indispensibly bound

to take particular Cognizance of what the Defendant urgeth in his own Behalf, as well as what is alledged against him,) in summing up the Evidence, doth omit, (out of Forgetfulness, or otherwise,) the only material Point upon which the whole Indictment is founded, and which the Defendant so much urged in his own Behalf; and also which inevitably led the Jury into this Mistake of their Verdict; whether, I say, this be not sufficient to stay Judgment?

3. Whether any Judge, &c. can construe *Printing* to be a sufficient Overt-Act, till it be so declared by Parliament?

4. Whether the Stat. of 13 Car. 2. does not plainly intimate the contrary? And likewise the 13 and 14 Car. 2. lately revived?

The Prisoner did make it his humble and last Request, *That these Things being Matter of Law, he might be allowed Council to plead them, or any other Matter of Law, in his Case.* And he back'd his Request with this modest Reason, *That being Matter of Law, he thought the Satisfaction of the Judge's Conscience concerned in it, as well as his Life; but if his Council could be satisfied, or fairly over-ruled in it, he would acquiesce without more ado.*

The Matter now lay wholly before the City Recorder, Sir *Salathiel Lovell*, who, after a Flourish or two of empty Rhetorick, proceeded to pronounce that dreadful Sentence, which the Law allots to Treason; to have the Heart and Bowels torn out, and burnt, and the Body dismembred, and the Quarters set up, or disposed as Authority orders.

Whilst Mr. *Anderton* was preparing for his Death, his Friends were struggling for his Life: He had many Friends upon the Account of his known Ability, Industry, and Integrity; others were taken with his manly Behaviour, and clear Pleading upon his Trial; and many more were forward to move in his Case, in Pity, or Indignation, at his Usage.

The Queen, (as still upon Occasion it was answered,) could do nothing without the Council, nor the Council without the Queen; if the Council was met, the Queen was not there, or if she was there, there wanted such and such of the Council, without whom nothing could be done; and thus Things at every Turn were shuffled off; but where the Danger is imminent, and Time short, Persons are willing to watch hard, and look out sharp. Taking this Course, his disconsolate Wife had at last so fairly set the Council, that it was thought they could not avoid giving her a direct Answer; for though they were resolved he should not live, yet (the Matter being so warmly debated amongst all Sorts of Persons,) they were not willing to say peremptorily he should die. To put her by now, this Artifice served effectually; a Number of Waiters attending about the Council-Chamber, fell foul upon the poor Woman in no very courtly Language, reproaching and reviling her, That she did not bring her Husband to Confession: In short, they so teased and plagued her, that they drove her away.

From the Time of his Commitment, to the very Moment of his Death, he was of a very even and sweet Behaviour, being modestly Courageous; Cheerful, without Lightness; and Devout without Ostentation. He made it his particular

particular Request, that some Minister, or Ministers, would be with him every Morning and Evening to read the Prayers of the Church, and perform such other Offices as in such Case as his did belong to that Function, which, except one Day in the Week, was duly observed, and sometimes oftner; for when any Clergy came accidentally to visit him, if they did neglect to offer, he commonly requested them to pray with him. He gave little, or no Entertainment to any Hopes of Life, as being sensible that it was rather Malice, than Matter against him; and that a Crime may be pardoned, but Malice is not to be satisfied without the Destruction of its Enemy, if he once come in its Power. He often express'd a great Satisfaction in the Cause for which he suffered, saying, *That it ministred to him both Comfort and Courage, and that he doubted not but that God would acquit, whom the Court had condemned.* As to the Ordinary, (Mr. Smith,) he indeed, in Point of Conscience, refused to Communicate with him, yet mildly and modestly telling him, that he was desirous to give him no Trouble, and requested of him, that he would not any ways concern himself with him, or about him; at which Mr. Smith fell into such an unseemly intemperate Fit of Rage, that he reviled the Prisoner with bitter Words, and very generously damned both him, and all the Ministers that came at him, to Hell: But he took it patiently, and returned not the least Word that might seem to sound harshly. As his Wife once laid her Hands on his Fetters, and wept, he intreated her to forbear, saying, *He was less than a Man that could not bear that; but that her Tears were more grievous to him than his Fetters:* Another time, as he was hanging a Link on the Chair, thereby to ease himself somewhat from the Weight of his Fetters, and perceiving his Wife to look very heavily at it, he said chearfully to her, *My Dear, these are my Arms, alluding to the Arms of their Family, being Sable, two single Shack-bolts, and one double, Argent.*

When Tucker told him that the *Dead Warrant* was come, and that he was in it, he gave him Thanks for giving him Notice of it, that he might be sure he had now nothing else to do, but to prepare to Die; saying further, *The Lord's Will be done.* He received the Holy Sacrament twice during his Imprisonment; but whether it be Customary, or that they had particular Order, the Keepers all, (except Walker, who was all along not only Civil, but even Compassionate towards the Prisoner,) the Evening and Morning before he suffered, became exceeding rugged and harsh, not only to him, but to all that came to him; insomuch that his Mother and Brother coming that Morning to receive the Communion with him, could neither beg, nor buy Admission; and the poor old Woman was forced to depart, without joining in the last Act of Christian Communion with him, or so much as taking her intended last Farewel of him.

Other very unbecoming Actions towards him I could mention, which I shall forbear, being unwilling to set forth that Barbarity which some delight to act. When he was brought down to go to the Place of Execution, he enter'd into the Sledge, and rode along in it with that calm Behaviour and decent Courage, as struck the Beholders with Remorse and Amazement, and made his Enemies gnash their Teeth with Indig-

nation, to see him triumph over their Malice even in his Death. In his Passage all the Way, the People rather seem'd sorrowful, than inclinable to offer any Abuse, except near St. Giles's Church, where a rude Fellow treated him with very spiteful Language, to which he made no Return, but lifting up his Eyes to Heaven, said, *O sweet Jesus! How much more hast thou suffer'd for me, and for Mankind? And shall not I learn of thee patiently to bear the undeserv'd Reproaches of this inconsiderate Man?*

As he was coming up to the Place of Execution, a Clergyman got up into the Cart to be ready to receive him; at which the Ordinary seem'd to be much incens'd; for he gave him very ill Words, bidding him get down, and saying, He ought not to be there, nor should he be suffer'd; the Minister replied little, but stay'd still, 'till (see how one ill Nature helps another) Major Richardson came up, and with Threatnings, and his Cane lifted up, forced him to come down, who immediately thereupon applied himself to the Sheriffs, (for by this Time they were come up) when some ill Person suggested that he was a *Papist*, to which the Prisoner presently answer'd, *Mr. Sheriff, upon the Words of a dying Man, he is not, but a Minister of the Church of England.*

The Ordinary made all the Opposition he could; but the Sheriff granted the Prisoner's Request, bidding the Ordinary hold his Peace, and saying it was a Thing never deny'd to a dying Man. Being in the Cart, and also the Prisoner's Brother, he used an Office which seem'd to be collected out of several Offices in the Common-Prayer Book, with such small Alterations as might serve to adapt them to the present Occasion; being since ask'd the Reason, he said that he did it both for the Authority of the Thing, and also to avoid any Cavils that might be made at, or any Snares that might be laid for, any of his own Conceptions. But when he came to mention the Creed, he put these particular Questions to the Prisoner: *Do you believe these Articles which you are now about to rehearse with me, to contain that Faith which hath all along been received by the Church of Christ? And particularly by the Church of England? And is this the Faith wherein you die, and wherein you hope for Salvation?* The Prisoner making Answer, *I do so believe, and am now ready to die in that Faith, and in that Faith hope for Salvation.* Then said the Minister, *If so, say after me:* Then they repeated the Creed, raising their Voices somewhat higher than ordinary; after that, the Minister ask'd him several Questions concerning his Repentance, his Charity, his Endeavours of Restitution for any Wrongs by him done, his forgiving of others any Wrongs done to him, and the like. And then, at the earnest Request of the dying Man, he denounced the Absolution, then proceeding to divers other Prayers, they concluded with that Sentence in the Office for the Burial of the Dead: *O holy and merciful Saviour, thou most worthy Judge eternal, suffer me not at my last Hour for any Pains of Death to fall from thee.* This being over, the Minister, (whether that he could not endure to see the Man die, or that he would not communicate with the Ordinary, or for some other Reason best known to himself,) after he had particularly embraced Mr. Anderton, fervently recommended his Soul to God, and taken his last Farewel of him, went down out of the Cart. The Sheriffs civilly



civilly commanded a Way to be made, and were readily obey'd, he passing through the Crowd, not only with Ease, but Respect. During the Time the Prisoner was at his private Devotions, an Order came to remit the Quartering of his Body, which being by some thought a Reprieve, it was handed to him, and having read it, and finding it no more, he return'd it, saying, *I thank you, Mr. Sheriff, the Will of the Lord be done.* Having Leave from the Sheriffs to speak his Mind, if he had any thing to say to the People; he began to speak, but being troublefomely interrupted by the Ordinary, and also finding he could not be heard, he desired a Speech he had prepared, might be taken out of his Pocket, and given to the Sheriffs, to be by them printed, which is as followeth:

*To my Countrymen,*

**L**iberty and Property hath for some Years made an hideous Cry in these Kingdoms, and nothing more than the Rights and Privileges of the Subject is the Pretence of our present Deliverers; and doubtless it was for the Sake of these that so many of my infatuated and blind Countrymen rebell'd against their lawful and injur'd Monarch, whilst Religion (Rebellion's Umbrage) was made the Covert of the hidden Designs of those who have now demonstratively shewn, that they sought nothing less than our Ruin: And that these were only Pretences to gain their Ends, the very blind, although they cannot see, yet must certainly feel it. Under the like Pretences do our Deliverers still continue to deliver us even from what they please, that they think will but in the least help to effect what they came for: Under the Notion of the Necessity of a War, they deliver us from our Money, and from our Traffick and Commerce, by which so great a Part of the Kingdom is sustain'd: Under the Notion of carrying it on, they kidnap our young Men, the Flower of our Kingdom, and directly contrary to Law transport them; and to save their own Foreigners, put them in the first Onsets of their Battles, as the Heathens did the Christians of old, that their Enemies Swords might be blunted with killing them, before they came to encounter them: They exhaust all our Stores both for Sea and Land, and carry away all our Artillery; and if any Man seem but to disapprove of these their Proceedings, under the Notion of Law, they murder him: Nay, if they do but so much as suppose him not to be on their Side, he must be a Traitor, and no Matter what the Law says, they say he shall die.

Can any Thing be more plain to demonstrate this, than my present Case? My supposed Crime was Printing, and all that the Witnesses could personally say against me, was, That I was a Man against the Government, and had called the Prince of Orange Hook-nose, tho' I protest I never did; not one of them could say, nor did they offer to say, that I ever printed the Books of which they accuse me, or procured them to be printed, or publish'd any of them, or that the Materials were mine, or that I hired the Room where they were

found; but I was an ill Man, and that was sufficient: By which 'tis plain, that they were resolv'd, right or wrong, to have my Life.

That they design'd not to try, but to convict me, is as plain; for they refused positively to allow me Counsel to such Matters of Law, as was never refused to any before; and tho' I caused several Statutes to be read, some to prove that there must be Two Witnesses at least to the Fact; others, that though there had been Two, as there was not one, yet positively declared that it was not Treason: Nay, the very last Session of Parliament was it enacted, That the Printer of seditious and treasonable Books should for the first Offence be punished no otherwise than not to follow his Trade for three Years, and for the second Offence, never to follow it more, and such farther Punishment as seemed fit to the Court, not extending to Life or Limb. Now though mine (had it been proved) had but been the first, yet you see, contrary, and in direct Opposition to the Law, they make it High Treason: And when the Jury could not agree to find me guilty, and came down to ask the Court, Whether the finding these Things there, and supposing them to be mine, since it could not be proved that I printed these Books, or had made any Use of them, could affect my Life? I say, when the Jury ask'd this Question, and the Lord Chief Justice Treby told them positively, *No, it did not*; yet withal he told them, *That that was not their Business, their Business was to find me Guilty of Printing*: And while they stay'd, the Court frown'd upon them to that Degree, that the Foreman told them, he was not to be frighted; upon which they publickly reviled them, calling them, *ill Men, ill Subjects, and a Pack of Knaves*; and so terrified them into a Compliance. That this is true, those who were near know too well, although the partial Writer of the Trials hath most perfidiously published not only an unfair, imperfect, and lame Account, but hath also stuffed it with downright Untruths and Falshoods, and left out whatsoever made for me; not so much as mentioning the Contradictions of the Witnesses in what they did swear, their swearing to some Things that made for me, and when I took hold of them, they denied them; nor hath he, in the least, told the World of the Judge's over-ruling whatsoever I offer'd, without giving any other Answer than that *it should be so, because they would have it so*; with many other such Things, which the conscientious Auditors can testify.

And now I pray consider where is this Liberty and Property? Where the Rights and Privileges of the Subject? Nay, where the very Laws themselves? And consequently where is the Security of any Man? Why, even in the Deliverers Pockets, where your Money is, and where also, without all doubt, if you look not well to yourselves, your Estates, e'er long, will be likewise. What are the Proceedings but Arbitrary in a superlative Manner, and such as no Reign ever produced before? These were they you were heretofore only afraid of, being jealous without just Cause; but now you see them actually come

\* This Trial here spoken of, is the foregoing one, printed in the Sessions-Paper of that Time.

" upon you. I hope you yourselves will put a  
 " Stop to them, by laying these Proceedings be-  
 " fore the Parliament, for had it been sitting at  
 " this present, these Proceedings durst not have  
 " been practised; and I pray God to put so  
 " speedy an End to them, that as I am the  
 " first, so I may be the last that may suffer by  
 " them.

" I have hitherto lived a Member of the Or-  
 " thodox Church of *England*, as by Law esta-  
 " blished, and I declare I now die in the Unity  
 " of the same: Therefore, according to its Dis-  
 " cipline, I hold myself obliged to ask Pardon  
 " of the whole World, of every particular Person  
 " whom I have any ways offended; and I do  
 " freely and sincerely forgive every one that has  
 " offended me, particularly my most false and  
 " perjured Witnesses, and among them more  
 " particularly *Robin Stephens*; my most unjust  
 " and unrighteous Judges, and my repenting  
 " Jury; and I pray God may not lay this their  
 " Sin of wilful Murder to their Charge at the  
 " General Bar, where they shall appear as Crimi-  
 " nals, and not Judges.

" May the Almighty bless, preserve, prosper  
 " and restore our Sovereign Lord King *James*,  
 " to the just Possession of his indubitable lawful  
 " Crowns; strengthen him that he may vanquish  
 " and overcome all his Enemies here on Earth,  
 " and crown him with eternal Glory hereafter:  
 " And that he may never want Heirs to inherit  
 " his Crown, bless, I beseech thee, O God, his  
 " Royal Highness the Prince of *Wales*, and give  
 " him such a numerable Issue, that there may  
 " never want one of his Loins to sway the Scep-

ters of these Kingdoms so long as Sun or Moon  
 " endure. *Amen. Amen.*

June 15, 1693.

*William Anderton.*

During the Time that the Ordinary busied  
 himself, he was observed not to mind him, but  
 to employ himself in his private Devotions, and  
 after the Delivery of his Speech to the Sheriffs,  
 his Cap pulled over his Eyes ready for Execu-  
 tion, he pray'd thus; " Most great and most  
 " merciful Lord God! Do thou look down upon  
 " me thy poor unworthy Servant in this Hour  
 " of my great Extremity, and have Mercy upon  
 " me. Sweet Jesus, receive my Soul into thine  
 " everlasting Kingdom, for into thy Hands do  
 " I commend my Spirit, because thou hast re-  
 " deemed it, O Lord God of Truth! Come  
 " Lord Jesus, and receive my precious Soul; Fa-  
 " ther of Mercy, have Mercy upon me; O God  
 " the Son, Redeemer of the World, have Mercy  
 " upon me; Lord, comfort and support my Soul  
 " in these my last Minutes; come sweet Jesus, come  
 " quickly, and save me sweet Jesus; by thy most  
 " precious Blood, by thy Agony and bloody  
 " Sweat, and by the coming of the Holy Ghost,  
 " O Lord, do thou deliver me." Here the Or-  
 dinary put in, saying, you must give a Sign when  
 you are ready; whereupon the Sheriffs charged  
 him not to interrupt him; and as he was proceed-  
 ing, his Sister desired to speak to him, which was  
 granted; who kissing him, and weeping over him,  
 said, *Be of good Comfort, though there is no Par-  
 don for you here, yet there is above.* So when they  
 had taken a Christian Leave of each other, he  
 returned to his Devotions, when after a short pa-  
 thetical Prayer, constantly calling upon his Savi-  
 our, the Cart drove away.

XLVIII. *Proceedings before the Lords of the Council, and  
 Admiralty; in Relation to the Trials of John Golding,  
 Thomas Jones, John Ryan, Darby Collins, Rich. Shivers,  
 Patrick Quidley, John Slaughter, and Constantine De Hartley,  
 as Pirates, though acting under King James the Second's  
 Commission.* September, 1693. 5 Will. & Mariae.

SINCE the Commencement of King *Wil-*  
*liam's* War, several Privateers having been  
 taken and detained in Prison, acting by King  
*James's* Commission, it was resolved, about July,  
 1692, by the Lords of the Privy Council, That  
 they should be try'd as Pirates, having no Com-  
 missions from Kings or Sovereign Powers what-  
 soever; and accordingly, about November, 1692,  
 the Lords of the Admiralty ordered Dr. *Oldisb* to  
 proceed against them as Pirates; but he declined  
 the doing thereof, and gave his Opinion in Writ-  
 ing under his Hand, That they were no Pirates,  
 nor ought to be prosecuted as such: Upon which,  
 September, 1693, Dr. *Oldisb* was summon'd before  
 the Cabinet Council, with Sir *Thomas Pinfold*,  
 VOL. VIII.

Dr. *Newton*, Dr. *Walker*, Dr. *Littleton*, and Dr.  
*Tindall*.

The Lords of the Council present, with the  
 Secretaries, the Earl of *Nottingham*, and Sir  
*John Trenchard*, were the Earls of *Devonshire*  
 and *Pembroke*, and the Lords of the Admiralty.

Mr. Secretary *Trenchard* demanded the Rea-  
 son of his Opinion.

Dr. *Oldisb*. Pirates are common Enemies to all  
 Mankind, having no legal Authority for what  
 they do; but they shew a Commission sign'd J. R.  
 dated at the Court of *St. Germain's*, together  
 with Articles and Instructions annexed, in the  
 same Form as Privateers have, giving Caution  
 and Security to bring Prizes, and Judgment into  
 the



the Court of Admiralty, before *Thomas Shadford*, at *Brest*, or elsewhere: This does no way agree with Piracy, or the Character of a Pirate, who is a Robber, and has thereby lost his Right in the Law of Nations.

*Sec. Trenchard.* But King *James* has lost his Sovereignty, in that he has parted with his Crown, and consequently with the Power of granting such Commissions.

*Dr. Oldish.* A King may be deposed of his Crown, but cannot lose his Right. So says *Grotius*, *Jus Regis penes ipsius manet, utcumque Possessionem amiserit*. A King, therefore, in Case he be deposed of his Kingdom by the Law, he has a Right to War, and if so, he has all the Ways and Consequences of War, amongst the rest, Pignorations and Reprisals, which is a Power of granting Letters of Mart and Reprisal.

*Sec. Trenchard.* This may be Law, in Case where the King is deposed; but what if the King abdicates?

*Dr. Oldish.* If he did really abdicate, as did the Emperor *Charles* the Fifth, or the Queen of *Sweden*, then he is no other than a private Person, and cannot legally grant any Commission. But whether a Privateer, acting by Commission granted him *de facto* by King *James*, not knowing that he had abdicated, whether such an Error will excuse *à Pena delicti*? For that a reputable Power is equivalent to a real one in such a Case.

*Sec. Trenchard.* To clear this, Doctor, we must examine the Circumstances of the Case, and see if they be such as may occasion and induce a common Error, whereby many may be deceived, as well as Privateers.

*Dr. Oldish.* 'Tis notorious to us, and all the World, that King *James* was once a lawful King, and acknowledged by us, and all the World, to be so; that when his Army deserted him, he fled to his Ally in *France*, for Aid; then he went into *Ireland* to recover his Kingdoms, as his Declaration sets forth, there he grants Commissions; those who fought under those Commissions, and were taken, were not used as Thieves and Robbers, but as Prisoners of War; whereby his Claim seem'd to be allow'd by his very Enemies; and those Persons who acted under him in *Ireland*, were treated as Enemies, not Rogues, tho' they acted under no King but King *James*, and by his Command; that upon their Return to *France*, they repair'd to King *James*, their King, and thought him as well empowered to grant Commissions by Sea as Land, and upon Receipt of Commissions from him, came out *animo hostili*, as Privateers, *non animo furandi*, as Pirates: That a colourable Authori-

ty remaining in King *James*, will excuse those who acted under him, from being Pirates, since the Abdication was never published, nor so much as heard of in *France*; and since in Piracy, which deserves *ultimum supplicium*, if proved, all favourable Allowance ought to be made, and a general Acknowledgment of a false Authority in another Country (where the Commissions were taken) will free them from a felonious Intent in taking them, and consequently from Piracy; for so it is, that King *James* is owned and reputed a King in *France*; and therefore in this Case 'tis undoubted Law, *Communis Error facit jus*.

*Lord Devon.* What if *Tourville* should grant such Commissions to any *Englishman*, were they not Pirates who acted under him?

*Dr. Oldish.* No, even the Power of granting such Commissions being excepted in his Patent, yet by common Intendment, as Admiral, he can grant such Commissions; and as it is not to be presumed, that private Men should look into his Patent, so neither ought they to suffer for not having seen it; 'tis sufficient for them, that he is reputed to have such Power.

*Lord Devon.* What if *Monseigneur Pomponne*, or any other Minister of State, should grant such Commissions?

*Dr. Oldish.* Why then it would not be good, for by common Presumption, a Secretary of State would not grant such Commissions, that Power being proper only to the Admiral.

*Sec. Trenchard*, and *Lord Faulkland*, in great Heat. I — Pray Doctor, let us deal more closely with you, for your Reasons are such as mount to High Treason. Pray what do you think of the Abdication?

*Dr. Oldish.* That is an odious ensnaring Question; however it may be, I think of the Abdication as you do; for since 'tis voted, it binds at least in *England*: But those Gentlemen were in a Foreign Country, and knew nothing of it; and tho' King *James* be not King here, yet the Colour of Authority remaining, and common Reputation of him as King there, excuses them, as I said before.

*Sec. Trenchard.* What say you of the Pirates under *Anthony*, King of *Portugal*?

*Dr. Oldish.* As to the Case of the *Frenchmen*, under *Anthony*, King of *Portugal*, the Book says, *Traſtati sunt non quasi juſti hoſtes, ſed quasi Pirati qui ſub Antonio militant*; and the Difference of this Case appears in the Reason of it: For there the *Spaniards* never owned *Anthony* as King; here it is quite otherwise, for King *James* was really and truly a King, owned by us, and all the World\*.

Sir

\* *Dr. Tindall*, in his *Essay concerning the Laws of Nations*, Page 25, 26, 27, 28, 29, and 30, says, The Occasion of sending for the Civilians, after some of them that were consulted had given their Opinions in Writing, was, as the Lords told Sir *Thomas Pinfold*, and *Dr. Oldish*, (who had declared that they were not Pirates, without offering to shew the least Reason why they were of that Mind,) to hear what Reason they had to offer for their Opinion.

Then Sir *Thomas Pinfold* said, It was impossible they should be Pirates, for a Pirate was *hostis humani generis*, but they were not Enemies to all Mankind, therefore they could not be Pirates. Upon which all smiled, and one of the Lords asked him, Whether there ever was any such Thing as a Pirate, if none could be Pirate but he that was actually in War with all Mankind? To which he did not reply, but only repeated what he had said before. *Hostis humani generis*, is neither a Definition, or as much as a Description of a Pirate, but a Rhetorical Inveective to shew the Odiousness of that Crime. As a Man, who, though he receives Protection from a Government, and has Sworn to be true to it, yet acts against it as much as he dares, may be said to be an Enemy to all Governments, because he destroyeth, as far as in him lieth, all Government, and all Order, by breaking all those Ties and Bonds that unite People in a Civil Society under any Government: So a Man that breaks the common Rules of Honesty and Justice, which are Essential to the Well-being of Mankind, by robbing but one Nation, may justly be termed *hostis humani generis*; and that Nation has the same Right to punish him, as if he had actually robbed all Nations.

*Doctor Oldish* said, That the late King, being once a King, had by the Laws of Nations a Right to grant Commissions; and that though he had lost his Kingdoms, he still retained a Right to the Privileges that belong to Sovereign Princes. It was asked him by one of the Lords, Whether he could produce an Author of any Credit, that did affirm, that he that had no Kingdom, or Right to any, could grant Commissions, or had a Right to any of those Privileges, that belong to Sovereign Princes? And that



Sir Thomas Pinfold being asked what he had to say, declared himself of the same Opinion.

Dr. Newton, and Dr. Walker did not declare their Opinions, but desired Time to consider of it. Dr. Newton said, It was against his Conscience to have a Hand in Blood.

Dr. Littleton said; That King James now was as a private Person; we had no War with him, nor he with us; or if he designed to have any, *Erarium non habet*, he is not in a Capacity of making War, he can neither send nor receive Ambassadors, and those who adhere to him, are not Enemies, but Rogues, and consequently those Persons are not Privateers, but Pirates.

Dr. Tindall was of the same Opinion with Dr. Littleton.

Dr. Oldisb hereupon was removed from his Place of King's Advocate, and Dr. Littleton succeeded him, who try'd the Persons, and condemned them. After their Condemnation, they presented the following Petition to the House of Peers, viz.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled.

The humble Petition of John Golding, Thomas Jones, John Ryan, Darby Collins, Richard Shivers, Patrick Quidley, John Slaughter, and Constantine De Hartley, now Prisoners in the Marshalsea, lately tried and condemned as Pirates and Traitors.

Sheweth,

THAT Whereas your Petitioners have been lately tried and condemned as for Piracy and Treason, for acting under Commissions from King James, and the King of France: Whereas, as your Petitioners humble conceive, and are advised, they ought not, by the Laws of Nations, or the Laws of this Land, to have been condemned as for either; but to have been used as Enemies and Prisoners of War.

And Whereas there is a Reserve in the Statute of 25 Edw. 3. of Treason, That where any Cases, in Times to come, shall happen before

that no King would suffer those Privileges to be paid to *Christiana*, when she ceased to be Queen of Swedenland; and that it was the Judgment of all the Lawyers, that ever mentioned that Point, that she had no Right to them; and he did hope, that those that had Sworn to Their present Majesties, did not believe the late King had still a Right: And that that Point was already determined, and would not be suffered to be debated there. To which he answered, That King James was allowed very lately the Rights of a King, and that those that acted by his Commission in Ireland, were treated as Enemies, and People that followed his Fortune, might still suppose he had a Right, which was enough to excuse them from being guilty of Piracy.

One of the Lords then demanded of him, If any of Their Majesties Subjects, by Virtue of a Commission from the late King, should by Force seize the Goods of their Fellow-Subjects by Land, Whether that would excuse them from being guilty at least of Robbery? If it would not from Robbery, Why should it more excuse them from Piracy? To which he made no Reply. Then the Lords asked Sir Thomas Pinfold and him, Whether it were not Treason in Their Majesties Subjects, to accept a Commission from the late King, to act in a hostile Manner against their own Nation? Which they both owned it was, (and Sir Thomas Pinfold has since, as I am informed, given it under his Hand, that they are Traitors.) The Lords further asked them, If the seizing the Ships, and Goods of their Majesties Subjects, were Treason, Why they would not allow it to be Piracy? Because Piracy was nothing else but seizing of Ships, and Goods, by no Commission; or what was all one, by a void or null one; and said, That there could be no Commission to commit Treason, but what must be so: To which they had nothing to reply. Only Dr. Oldisb pretended to quote a Precedent, which he said came up to the present Case, about Antonio, King of Portugal, who, (as he said,) after he had lost his Kingdom, gave Commissions to Privateers to seize upon all Spanish Vessels, whom, as the Spaniards met with, they hanged as Pirates; (so far his Precedent is against him.) But an Author, without naming him, was of Opinion, as he said, That if Antonio had ever been a rightful King, that then the Spaniards ought not to have treated those, that acted by his Commission, as Pirates. This was all that was said by the Doctor, in Behalf of the late King's Privateers; upon which I must beg Leave to make a few Reflections. As to those Privileges which were allowed the late King in Ireland, they were not allowed him upon the Account of any Right, nor was it an owning that he had any Right to that Kingdom, but barely as he was in Possession; for then he had *Republicam, Curiam*, &c. and consequently a Right to be treated as an Enemy; and not only he, but whoever had been in Possession, would have had a Right to have been used after the same Manner, and is no more than what is practised in all Civil Wars, where there are just Forces on either side. These Privileges being allowed him when he was a publick Person, and in Possession of a Kingdom, could be no just Reason to induce any to imagine that they would be permitted him when he was reduced to a private Condition; much less is it such a Presumption as is sufficient to excuse them, who acted by his Commission, from suffering as Pirates. The very taking a Commission from him, after he was reduced to a private Condition, to act against their own Nation, was a Demonstration that the Government was no longer in his, but other Hands, who could not reasonably be presumed would allow that he had still any Right, or that they that acted by his Commission should be dealt with as if he still had a Right; but that they should be used as if they acted by no Commission, or what is all one, a null or invalid one. Their pretending to believe he has still a Right, is no more an Excuse in the Case of Piracy, than of Treason, which every Traitor may pretend to.

As to the Story of Antonio, the Doctor is (to suppose no worse) abominably mistaken in the very Foundation; for they that suffered by the Spaniards as Pirates, were French, who had not their Commissions from Antonio, but from their own King, as *Albericus Gentilis*, who mentions this Story, *Lib. 1. cap. 4.* saith, *At ipsa Historia vincat eos non fuisse Piratas, per literas quas Regis sui ostendebant, et regi serviebant, non Antonio, nisi maxime per Antonio, quod illos non tangebant.* And *Conflaggius*, who is the Historian he refers to, and who has given an excellent Account of that War, saith it was the Royal Navy of France (which is very improbable did act by any Authority but that of the French King's) set out, as he Words it, *Regis sub Auspiciis*, with which the Spanish Fleet engaged, and had the good Fortune, after a long and bloody Fight, to rout it, and took above five hundred Prisoners, of which almost the fifth Part were Persons of Quality, whom the Spanish Admiral was resolved to sacrifice as Pirates, because the French King, without declaring War, had sent them to the Assistance of Antonio: Against which Proceedings the Officers of the Spanish Fleet murmured, and represented to their Admiral, that they were not Pirates, because they had the French King's Commission; but That they chiefly insisted on, was the ill Consequence it would be to themselves, who, if they fell into the Hands of the French, must expect the same Usage. As to the French King's assisting Antonio without declaring War, they supposed, that before the Sea Fight, the two Crowns might be said to be in a State of War, by reason of frequent Engagements they had in the Low-Countries. This is the Account *Conflaggius* gives of it, which, how little it is to the Purpose the Doctor quoted it for, is so visible, that there is no need of any Words to shew it. But granting (as the Doctor supposeth) that Antonio never had any Right, or at least, the Spaniards would never allow he had any, yet it is evident from the Historian, that they allowed him, during Possession, the same Privileges as the late King had during the War in Ireland: And if the Spaniards, by the Law of Nations, after Antonio was driven from his Kingdom, might treat those that acted by his Commission as Pirates, why may not the English deal after the same Manner with those that act by the late King's Commission, since they look on him to be in the same Condition as the Spaniards did on Antonio, without a Kingdom, or Right to one? What Difference can that make, that one had never a Right, and the other, though he had once a Right, has lost it?

These two Civilians, I believe, are the only Persons pretending to be Lawyers, that are of Opinion, That a King without a Kingdom, or Right to one, has, by the Law of Nations, a Right to grant Commissions to Privateers, especially if they are Subjects (as they have acknowledged it) to that King, against whom they, by their Commissions, are to act. Upon what Account can such a Person claim these Privileges? Or for what Reason should Mankind pay them to him, more than to other private Persons? Are these Privileges like the Charms, or indeleble Characters, the *Papists* say, are inseparable from the Persons of their Priests? Which, whatever it be in Ecclesiasticals, is no small Bigotry and Phanaticism in Civil Affairs. And it is the height of Folly, Madness, and Superstition, to believe that the People, who have entrusted some one amongst them with Power for no other End but for protecting them, can, upon no Account whatever, resume it.



any Justice, which may be supposed Treason; but are not therein specified, that such Justice shall tarry, without going to Judgment, 'till the Cause be shewed and declared before the King and his Parliament.

And Whereas your Petitioners, at their Trials; did humbly insist, and often request the Judges that tried them, that their Cases might be specially found by the Juries, and that they might have Council assigned to argue them; and particularly proposed the aforesaid Reservation, in the said Statute for Treason, to their serious Considerations; yet nothing of all this could be obtained from your Petitioners Judges, or prevail with them to suspend the condemning your Petitioners, so much as for one Hour: Although no such, or such like Cases as any of your Petitioners are, (considered with all their Circumstances) or have ever, as your Petitioners are advised, been adjudged Treason, as will sufficiently appear to your Lordships, (as your Petitioners believe) if your Lordships will be pleased to take into your serious Considerations, your Petitioners Case hereunto annexed, with the Reasons added thereunto. Your Petitioners therefore humbly appeal to your Lordships Justice, in the Premises; beseeching your Lordships seriously to read and consider your Petitioners said Cases, and extend your Justice and Goodness to your Petitioners, for their Relief, as to your Lordships great Wisdoms shall seem meet, and to interceed for your Petitioners.

*And your Petitioners shall ever pray, &c.*

Our Cases, with some Reasons and Considerations, humbly offered to your Lordships now assembled in Parliament, why we *John Golding*, &c. lately condemned as Pirates and Traitors, ought not, according to the Law of Nations, so to have been.

Our Case is this: We say (as was also said at our Trial) That we are all Natives of *Ireland*, and were in the actual Service of King *James*, and all along acted under his Commissions, from the Time that the Prince of *Orange* invaded *England*, to the Time of the Surrender of *Limerick*; and the Articles made upon that Capitulation, signed by Lieutenant General *Gingle*, which were soon after published by Authority: That we with several Thousands more, pursuant thereunto, were conveyed, as Enemies, into *France*, with Arms, Horses, Brass Guns, Mortar-pieces, and Ammunition. That being thus conveyed into *France*, were continued still to act and serve under King *James's* Commissions, as our King; and he all along, both whilst we were in *Ireland*, and after we were thus conveyed into *France*, continued to Command or Commission us, as his Subjects. And we the said *Richard Shivers*, &c. who are condemned as Pirates, say, (as we also said at our Trial) That the Ship and Goods, for the taking of which we were charged as for Piracy, we took as Privateers, by Virtue of a Commission and Instructions from King *James*, signed and dated from his Court at *St. Germain's* in *France*; where he exercises a Regal Authority. And we the said *John Golding* and *Thomas Jones* say, That we accepted the King of *France's* Commission, and acted under it, (for which we were condemned as Traitors) by the Permission and Consent of King *James*. And we all say, (as we likewise said at our Trials)

That we never owned or submitted to the Authority of this Government in any respect whatsoever, or ever received any Protection from it, or from King *William*, but all along served as Subjects to King *James*, and Enemies to King *William*; and were taken as in actual Hostility, acting under the aforesaid Commission and Instruction. We also say, that there are many Thousands in *Flanders*, *England*, *Scotland*, and *Ireland*, who have all along, and still do act promiscuously under King *James*, and the King of *France's* Commissions; and in either Case, as often as any of them have been taken Prisoners, they have been treated as Enemies, and Prisoners of War.

And our Case being thus, we humbly conceive that neither by the Law of Nations, or by the Law of this Land, we ought to be treated otherwise, than as Enemies, and Prisoners of War.

And First, We humbly beg Leave to offer; and say, that King *James* was at the Time of the Invasion of *England*, by the Prince of *Orange*, Actually and Rightfully King of these Realms; and that by the late Invasion of *England*, King *James*, and the Prince of *Orange*, became actual Enemies to each other; and that the Soldiers taken in Arms by either Party, ought, and were look'd on as Enemies, and Prisoners of War.

That as long as any War continue, the Prisoners taken on either Side, are Prisoners of War.

That King *James's* withdrawing from *England*, did not put an End to this War, between him and the Prince of *Orange*; and that the War in *Ireland*, was a Continuation of that War.

That it is lawful for the Subjects of these Kingdoms, to stand by, and assist their lawful King, as long at least as they please, in any War, or Design, raised against him, or his Government; and are not compellable to quit their Service to such lawful King, so long as he will continue to act as King, and command them as Subjects.

That in Case of any Invasion, and Dispossession ensuing thereupon, the Subjects of these Realms are not bound to abide within these Realms, and submit and become Subjects to the Dispossessor, at the Peril of Treason; but may lawfully still attend their King's Fortune and Service, if they chuse so to do.

That the Possession of these Kingdoms, obtained through any Invasion, does not either alter the Possession of, or Right to the Subjects Allegiance; for that Allegiance is a natural Relation, and follows the natural Person of the King, and is not incident, or appurtenant to a Place, like a *Villein* to a Manour; for this, be pleased to see the great Case of the Union of *Scotland*, in *Moor's Reports*, p. 790, solemnly considered, and adjudged in Parliament.

That any Dispossessor of any Lawful King of these Realms, cannot legally pretend to the Allegiance of such Subjects of such lawful King, as never were within his Power, or Subjection, or ever recognized, or submitted to him, or had any Protection from him, because such can be no Debtors to him, and Allegiance is a Debt, and therefore such cannot stand accountable to any such Dispossessor, as for Treason; till he is some way or other possess'd of their Allegiance.

That the Allegiance of any Subjects of this Kingdom, cannot be transferred to the Dispossessor of a lawful King, by the Act of others, without some Consent, or Act of their own.

That



That a King may continue to wage War after he is dispossessed of his Kingdom, and be reputed still an Enemy by the Law of Nations; and consequently all those of his Subjects that continue still with him, without transferring their Allegiance to the Possessor, be reputed, and treated as Enemies; for it would be absurd, to say, That the King may continue in War, where the Subjects cannot.

That King *James* having no *Ærarium*, or Treasury, (in Case it be so,) as has been alledged against the Validity of his Commission; is no more Sense, than it would be to say, That no Prince by the Law of Nations, can continue War, but at his own Charge.

That the War between King *William* and King *James* continued on, after King *James* and his Forces left *Ireland*, and that the Articles upon the Surrender of *Limerick*, admit it so to do, if the permitting so many Thousand Men with Arms, Horses, Guns, and Ammunition, to go into *France* to King *James*, to serve as Soldiers, Commission'd by him, may be any Proof of such Admission.

That the said Articles being Sign'd by Lieutenant-General *Gingle*, *Limerick*, and other Places having been surrender'd upon the Faith of those Articles, all concern'd in them, ought by the Law of Nations, to have the full Benefit of them; and that although they had never been afterwards confirm'd.

That King *James* is still actually in War, and in Confederacy with the King of *France*; that many Thousand *English*, *Scotch*, and *Irish*, still act under Commission from King *James*, in Conjunction with the *French* Forces: That they have hitherto been discharg'd, and exchange'd by the Confederates, (as Prisoners of War,) though taken fighting against the *English* that act under King *William's* Commission; and if so, Why are King *James's* Commissions anull, and nothing at Sea?

That King *James* and the King of *France* being Confederated together in War against *England*, it matters not in the Judgment of the Law of Nations, under which of the Confederate's Commission the Subjects of either acts; whether under King *James*, or the King of *France's*; but the Enemy without Distinction, if either Subject act under either Commission, ought by the Law of Nations, to treat them as Enemies, and Prisoners of War.

That where two Kings join in War against one another, after one of them has lost Part of his Dominions, (as King *James* had, when the King of *France* sent him Forces into *Ireland*;) and soon after he became wholly dispossessed, would it not be absurd, for any one to say upon this Case, That it was absurd by the Law of Nations, for the one King to assist or join with the other, after that he had lost Part of his Dominions? or if he does, that yet notwithstanding the War is wholly at an End as to the Loser, and he becomes a private Person, though never so many of his Subjects follow him in Warlike Manner by Capitulation from the Enemy, or that these Subjects are disabled by the Law of Nations, to accept any Commission from him, (or his Confederate King, by his Consent,) or serve him any more as their King: Or, if they do, that this will not excuse them from being Pirates, and Traitors to the Dispossessor.

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That the Law of Nations, to the Judgment of which our Case only belongs, is the Great and Imperial Law of Right and Equity that judges of the Rights of Kings and Nations, with respect to each other, and of the Rights of War, and of the Rights of Peace; and all Nations with respect to this Law, are considered as one great Corporation; and each Kingdom, or Nation, but as a single Member, or Part of this Corporation. And therefore this Law, or any Rule of Right, or Notion of it, cannot be altered, concluded or estopp'd by any Votes, Ordinances, or Statutes of any particular Nation, or Kingdom.

That every Lawful Establish'd King, in the Notion of this Law, has a Right to hold his Kingdom, during his Life; and that in Case it be any such King's Misfortune to be Dispossessed through any War, or Invasion, That he has *Jus Belli pro Regni Recuperatione*, and a Right to the Assistance of any other Prince, who shall think fit to join with him for the Recovery of his Kingdom, as being as much his Legal Remedy, as for any private Person for the Disseizing his Freehold by the particular Laws of any particular Kingdom.

That 'tis also a Notion, and Rule of this Law, That no Lawful King can lose the Name and Title of King, unless he Resign, or Abdicate his Kingdom; and that every Abdication, or Resignation, ought to be the Voluntary and Intentional Act of such King so to do, or else that it is no Abdication, or Resignation. That every such Abdication, or Resignation by this Law, must appear otherwise to the Judges of this Law, than only by a Vote, or Statute made only by the Prince, and Persons in Possession of the Kingdom of such supposed Abdicated King; or otherwise these Judges cannot, by the Law of Nations, admit it to be in any Case, wherein the Writ, or Issues of the same Case, turns upon such Abdication: Especially, if such King continued to act as a King; and to grant Commissions as such, &c. For if once such a Vote, or Statute, should be admitted as Evidence; in our Law, (would these Judges say,) no Prince once out of Possession, however he came so to be, could retain any Right to his Kingdom, or the very Name of a Prince, unless his Enemy would please to let him; for it would be no more than for the Enemy to Vote that the Prince has Resign'd, or Abdicated; and there would be an End of the Prince, and his Right; as to be sure no prevailing Enemy would omit to do, if such, or any such Vote, or Law made among themselves, would by the Law of Nations, utterly conclude, and unking the dispossessed Prince, and dissolve all Relation between him and his Subjects, as consequently it must do; and that therefore, however the Party making such Vote, and receiving Protection from the Prince in Possession, may be estopp'd and bound by it by their own Acts and Consents, yet in the Eye of the Law of Nations, (which alter not,) he continues in all the Circumstances and Rights of a dispossessed Prince, until he shall appear to have Resign'd, or Abdicated, according to the Law of Nations.

Lastly, We most humbly propose, and appeal to your Lordships Considerations, whether the Articles of *Limerick*, which were produced at our Trial, and are ready to produce to your Lordships, and the very reputed Power, (in Case



he had no other,) King James has hitherto had, and used, of granting Commissions, and all that have hitherto acted under his Commission having been used and treated as Soldiers and Seamen acting under real and valid Commissions, be not sufficient to excuse us; (who have never been within this Kingdom since the Beginning of the War, 'till we were brought Prisoners from the Condemnation of Pirates :) And whether acting under the King of France's Commission, being in Amity and League with King James, and by his Consent, can be in us Treason against King

William, who never, in any Respect, received his Protection; but adhered all along to King James, as to our King, and fought against King William, as King James's Enemy.

These Considerations are humbly submitted to your Lordships, being, as we conceive, of the greatest Consequence to all the Subjects of England; as the Case may sometimes happen.

However, some of them, if not all, were Executed.

## XLIX. RESOLUTIONS of the House of LORDS on several Books, &c. 1701. and 1702. 13 W. & 1 A.

*The Vote or Resolution and Orders made by the Lords Spiritual and Temporal in Parliament Assembled, relating to William Fuller, and the Books published by him. \**

*Die Luna 19 Januarii, 1701:*

**W**HEREAS by Order of the House of Peers, of the Twelfth Instant, *William Fuller* was Ordered Peremptorily to produce before their Lordships this Day, *Mr. Thomas Jones*; and *Mr. Fuller* attending at the Door, was call'd in, and ask'd several Questions relating thereunto; but the said *Fuller* not producing the said *Thomas Jones*, nor making any satisfactory Excuse to the House for his not producing of him: The House came to the following Resolution, viz.

It is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That in the Books Published by *William Fuller*, one intitled, *Original Letters of the late King's, and others, to his greatest Friends in England*; the other intitled, *Twenty six Depositions of Persons of Quality and Worth*, are contain'd divers False, Malicious, and Scandalous Matters, reflecting upon several Members of both Houses of Parliament; which are of dangerous Consequence to the Government.

And thereupon the following Orders were made.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Directions of this House given to the Warden of the *Fleet*, the Eighth Instant, that he should not con-

sine *William Fuller* further than he used to be, be set aside and vacated; and that *William Fuller* shall be, and he is hereby committed Prisoner to the Prison of the *Fleet*.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That His Majesty's Attorney General do forthwith prosecute *William Fuller*, according to Law, for Writing and Publishing the said False, Malicious, and Scandalous Matters; and that His Majesty's said Attorney General do also forthwith prosecute *Mr. Peter Buck*, and *Mrs. — Baldwin*, who Printed and Published *William Fuller's* said Books. †

*Matth. Johnson,*  
Cler' Parliamentor'.

*The Proceedings and Resolution of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, on Saturday the Ninth of May, 1702. Upon Part of the Preface to the Book, intitled, The History of the last Parliament, began at Westminster the Tenth Day of February, in the Twelfth Year of the Reign of King William, Anno Domini 1700. §*

*Die Luna 4 Maii, 1702.*

**C**OMPLAINT being made to the House, of a Passage in the Preface of a Printed Book, intitled, *The History of the last Parliament, began at Westminster the Tenth Day of February, in the Twelfth Year of the Reign of King William, Anno Domini 1700.*

The Passage was read to the House, and is as follows, viz.

\* *Die Luna 19 Januarii, 1701.* It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Vote or Resolution and Orders made this Day, relating to *William Fuller*, and the Books Published by him, shall be forthwith Printed and Published.

† *June 23.* *William Fuller*, that branded and infamous Impostor, being by an Order of the House of Lords, of the 19th of January, prosecuted for Publishing two false and scandalous Libels, the one intitled, *Original Letters of the late King James, and others, to his greatest Friends in England*; the other called, *Twenty six Depositions of Persons of Quality and Worth*, reflecting upon several Members of both Houses of Parliament, (particularly the Earl of Nottingham) and being fully convicted thereof, was brought to the *Queen's Bench Bar*, where Sentence was pronounc'd upon him, That he should appear in all the Courts of *Westminster*, with a Paper, denoting his Offence; That he should stand Three Times in the Pillory, and afterwards be sent to the House of Correction in *London*, there to be whipp'd, and continued to hard Labour, 'till the 24th of October next, and that he should remain in Custody, 'till he paid a Fine of 1000 Marks. Pursuant to this Sentence, *Fuller* stood Three Times in the Pillory, and was most unmercifully handled by the Mob at *Charing-Cross* and *Temple-Bar*, but was more favourably used before the *Royal-Exchange*. *Annals of Queen Anne*, Vol. 1. Pag. 53.

§ *Die Sabbati 9 Maii, 1702.* It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Proceedings of the House, in Relation to this Matter, be Printed and Published.

*Matth. Johnson,* Cler' Parliamentor'.

And perhaps there was a third Thing in Prospect of deeper Reach than all these; which was, That should it have pleased God, for our Sins, to have snatch'd from us the King on the sudden, by Chance of War, or other fatal Accident, during the Tumult of Arms Abroad, and the Civil Disorders they had rais'd among us at Home, and a numerous, corrupt, licentious Party throughout the Nation, from which the House of Commons was sometimes not free, they might entertain Hopes from the Advantage of being at the Helm, and the Assistance of their Rabble, to have put in Practice their own Schemes; and have given us a new Model of Government of their own Projection, and so to have procured to themselves a lasting Impunity, and to have mounted their own Beast, the Rabble, and driven the sober Part of the Nation like Cattle before 'em.

That this is no groundless Conjecture, will readily appear to any considering Persons, from the Treatment Her Royal Highness the Princess of Denmark, the Heiress Apparent to the Crown, met with all along from them and all their Party. They were not contented to shew her a constant Neglect and Slight themselves, but their whole Party were instructed to treat her not only with Disrespect, but Spight; they were busy to traduce her with false and scandalous Aspersions; and so far they carried the Affront, as to make Her at one Time almost the common Subject of the Tittle-Tattle of almost every Coffee-House and Drawing-Room, which they promoted with as much Zeal, Application, and Venom, as if a Bill of Exclusion had then been on the Anvil, and these were the Introductory Ceremonies.

It was thereupon Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That Francis Coggan, Robert Gibson, and Thomas Hodgson, for whom the said Book is mention'd to be printed, shall, and they are hereby required to attend this House, on Saturday next at Eleven of the Clock.

*Die Mercurii 6 Maii, 1702.*

The House being inform'd, That Doctor Drake own'd himself to be the Author of a Book, intitled, *The History of the last Parliament*, for printing whereof some Booksellers are Ordered to attend on Saturday next; and that he desired he might be appointed to attend at the same Time: Thereupon it is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That Doctor Drake do attend this House, on Saturday next at Eleven of the Clock.

*Die Sabbati 9 Maii, 1702.*

After reading the Order made the Sixth Instant, at the Desire of Doctor Drake for his Attendance this Day, the House took into their Consideration the abovementioned Paragraph. After the Reading whereof, Doctor Drake was called in, and the Order of the Sixth Instant read to him.

The Lord Keeper ask'd him what he had to say concerning the said Book, and the Book and the said Paragraph being shew'd him, he owned he writ the Book, and that Paragraph in particular; and he thought he had just Reason to write it, he having heard her Highness talk'd of disrespectfully in almost every Coffee-House.

Then he withdrew.

And after some Debate, was call'd in again; and the Lord Keeper told him, The House was

not satisfied with what he had said, but thought he trifled; and required him to acquaint the House with the Grounds of his writing that Paragraph.

He answer'd, He found it mentioned in divers anonymous Pamphlets publish'd at that Time, and hoped it was no Hurt to answer those Pamphlets, and desired Time to recollect what those Pamphlets were; and then withdrew.

After some Time he was call'd in again, and asked the following Questions, viz.

If he could charge any Person or Persons in the Kingdom, with the Matters asserted by him in that Paragraph?

To which he Answer'd, That he did not know any such Person.

Then he was ask'd, Whether he had heard any other Persons say, That they could charge any Person whatsoever, with the Matters contain'd in that Paragraph?

He said, He did not know of any such Person.

Being farther ask'd, If he had any other Grounds besides the Pamphlets, and what those Pamphlets were?

He said, He had no other Grounds besides the Pamphlets; and named the several Pamphlets following, as the Ground of writing that Paragraph, viz.

The Two Legion Letters; The Black List; The *Jura Populi Anglicani*; and Toland's Reasons for inviting over the Princess of Hanover.

And being ask'd, If in any one of these Pamphlets there was any thing said about setting aside the present Queen?

He answer'd, He did not remember there was.

Then, he being withdrawn, the said Paragraph was taken into Consideration, and it was propos'd to pass a Censure thereupon.

And after Debate,

This Question was put, That a Censure shall be now put upon the said Paragraph.

It was Resolved in the Affirmative.

Then this Question was put, That in the Preface of the Book, intitled, *The History of the last Parliament, began at Westminster the Tenth Day of February, in the Twelfth Year of the Reign of King William, Anno Domini 1700*, there are several Expressions, which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

It was Resolved in the Affirmative.

It is Resolved and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That in the Preface of a Book, intitled, *The History of the last Parliament, began at Westminster the Tenth Day of February, in the Twelfth Year of the Reign of King William, Anno Domini 1700*. (written by Doctor Drake, as he own'd at the Bar) there are several Expressions, which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That Her Majesty's Attorney General do forthwith effectually prosecute the said Doctor Drake, for having writ the said Paragraph.



*The Proceedings and Resolution of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, on Tuesday the Twelfth of May, 1702. Upon the Paragraphs contain'd in Pag. 89 and 90, of the Book, intitled, TOM DOUBLE Return'd out of the Country: Or, The True Picture of a Modern Whig; set forth in a Second Dialogue between Mr. Whiglove and Mr. Double, at the Rummer Tavern in Queen-street.\**

*Die Martis 12 Maii, 1702.*

THE Order being Read for the Master and Wardens of the Stationers Company, and John Nutt, to attend, to give an Account of what they have done in Order to find out the Author and Printers of the Book, intitled, *Tom Double return'd out of the Country: Or, The True Picture of a Modern Whig, set forth in a Second Dialogue between Mr. Whiglove and Mr. Double, at the Rummer Tavern in Queen-street.* They were call'd in, and Mr. Nutt said, That Mr. Barber, the Printer, gave him the Book to Publish, and they withdrew.

Then the House went into Consideration of the Paragraphs in the 89th and 90th Pages of the said Book, which were read, as followeth, viz.

Whiglove. *I find we have miscarried in one great Design, the Train would not take, we were very hot upon it just before the Parliament met, all the Whig Coffee-Houses rung how necessary 'twas to break into the Acts of Settlement, and to exclude—*

Double. *Mum, Whiglove, talk no more upon that Subject, I beseech you, fresh Orders are issued out, and since we are not strong enough to make it go, and that on the contrary it has alarm'd and provok'd all sorts of Men, we are now directed to say, That never any such Thing was intended by our Party, tho', God knows, it was the whole Discourse of all our Clubs. Under the Rose, this was one of those Embrios that proved Abortive upon the 30th of December last; but tho' it be not seasonable to stir in it now, never fear our abandoning a wicked Design, we never quite lay aside any Mischief; however, since it has already open'd the Eyes of a great many, and weaken'd our Interest among several of our own Side, whom (with Grief of Mind I speak it) we cannot work up to be guilty of so much Injustice, let us take all Occasions of declaring, That we will not violate these Acts upon any Account whatsoever; which we may the more safely do, because you know 'tis our Principle, not to think that we are bound by any Protections we make, either in Private or in Publick; and 'tis one of the great Advantages we have over the rest of our Fellow Subjects, that we can Fetter the Consciences of others, while our own are at perfect Liberty.*

Then it was propos'd to pass the same Censure on these Passages, as was pass'd on Part of the Preface of Dr. Drake's Book.

After Debate, the Question was put,

Whether the House shall be now Adjourn'd?

It was resolv'd in the Negative.

Then this Question was propos'd,

That in the Paragraphs which have been read, contain'd in the 89th and 90th Pages of the Book, intitled, *Tom Double return'd out of the*

*Country, &c.* there are several Expressions which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

Then this Question was put,

Whether the Words, *Groundless, False and Scandalous*, shall be left out of the Question?

It was resolv'd in the Negative.

Then the main Question was put,

That in the Paragraphs which have been read, contain'd in the 89th and 90th Pages of the Book, intitled, *Tom Double return'd out of the Country, &c.* there are several Expressions which are Groundless, False and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

It was Resolv'd in the Affirmative.

It is Resolv'd and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That in the Paragraphs which have been read, contained in the 89th and 90th Pages of the Book, intitled, *Tom Double Return'd out of the Country: Or, The True Picture of a Modern Whig, set forth in a Second Dialogue between Mr. Whiglove and Mr. Double, at the Rummer Tavern in Queen-street*, there are several Expressions which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

*The Resolution and Proceedings of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, on Saturday the Sixteenth of May, 1702. Upon a Pamphlet, intitled, Animadversions upon the Two last Thirtieth of January Sermons; One Preach'd to the Honourable House of Commons: The other to the Lower House of Convocation: In a Letter. As also upon a Book, intitled, A Sermon Preach'd on January the Thirtieth, 1701, in King Henry the Seventh's Chapel, before the Reverend Clergy of the Lower House of Convocation. By W. Binckes, D. D. a Proctor for the Diocese of Litchfield and Coventry. †*

*Die Sabbati, 16 Maii, 1702.*

COMplaint being made to the House, of a Pamphlet, intitled, *Animadversions upon the Two last 30th of January Sermons; One Preach'd to the Honourable House of Commons: The other to the Lower House of Convocation: In a Letter.*

After Reading and Considering several Paragraphs and Places therein, and Debate thereupon; It is Resolv'd and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That the Book or Pamphlet, intitled, *Animadversions upon the Two last 30th of January Sermons; One Preach'd to the Honourable House of Commons: The other to the Lower House of Convocation: In a Letter*, is a Malicious, Villainous Libel, contain-

\* It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Proceedings and Resolution of this House, in Relation to this Matter, be forthwith Printed and Published. *Matth. Johnson, Cler. Parliamentor'.*

† It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Resolution and Proceedings abovementioned, shall be forthwith Printed and Published. *Matth. Johnson, Cler. Parliamentor'.*

ing very many Reflections on King Charles the First, of ever Blessed Memory, and tending to the Subversion of the Monarchy.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Pamphlet, intituled, *Animadversions on the Two last 30th of January Sermons*: One preached before the Honourable House of Commons: The other to the Lower House of Convocation: In a Letter, shall be burnt by the Hands of the Common Hangman, in the Old Palace-Yard, Westminster, on Friday the 22d Day of this Instant May, between the Hours of One and Two of the Clock in the Afternoon of the said Day.

To the Sheriffs of London and Middlesex, and every of them.

Die Sabbati, 16 Maii, 1702. \*

Then the House took into Consideration a Book, intituled, *A Sermon preached on January the 30th, 1701, in King Henry the Seventh's Chapel, before the Reverend Clergy of the Lower House of Convocation*. By W. Binckes, D. D. a Proctor for the Diocese of Litchfield and Coventry. † And some Parts, or Paragraphs, out of the ninth, tenth, and fifteenth Pages of the said Book being read, as followeth, viz.

And first, As to the near Resemblance between the Parties concerned, as well the Actors as the Sufferers, comparing those in the Text, with those of the Day.

And here, one would imagine, the latter were resolved, to take St. Paul's Expression, in the most literal Sense the Words will bear, And crucifie to themselves the Lord afresh, and in the nearest Likeness that could be, put him to an Open Shame. If, with Respect to the Dignity of the Person, to have been born King of the Jews, was what ought to have screened our Saviour from Violence, here is also one, not only born to a Crown, but actually possessed of it. He was not only called King by some, and at the same time, derided by others for being so called, but he was acknowledged by all, to be a King; he was not just dressed up for an Hour or two in Purple Robes, and saluted with a Hail King! but the usual Ornaments of Majesty, were his customary Apparel: His Subjects owned him to be their King, and yet they brought him before a Tribunal; they judged him; they condemned him; and that they might not be wanting in any thing to set him at naught, they spit upon him, and treated him with the utmost Contempt. Our Saviour's declaring that his Kingdom was not of this World, might look like a sort of Renunciation of his Temporal Sovereignty, for the present desiring only to reign in the Hearts of Men; but here was nothing of this in the Case before us; here was an indisputable, unrenounced Right of Sovereignty, both by the Laws of God and Man; he was the reigning Prince, and the Lord's Anointed; and yet, in despite of all Law, both Human and Divine, he was by direct Force of Arms, and the most daring Methods of a flagrant Rebellion and Violence, deprived at once, of his Imperial Crown and Life.

\* It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Resolution and Proceedings above-mentioned, shall be forthwith Printed and Published.

† Afterwards made Dean of Litchfield.

§ It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Resolution and Proceedings above-mentioned shall be forthwith Printed and Published.

The Fact of this Day, was such a vying with the first Arch-Rebel, the Apostate Angel, Lucifer. It was such a going beyond the Old Serpent in his own way of Insolence and Pride, that it is no wonder if he then began to raise his Head, and set up for Dominion in this World, when thus warmed and enlivened by a fiery Zeal in some, and Rage in others, to the Degree of Drunkenness, thirsting after, and satiating themselves in Royal Blood; and in which respect only, heated to the Degree of Frenzy and Madness, the Plea in my Text may seem to have some bold of them, Father forgive them, for they know not what they do:

After Debate thereupon, it being proposed to Censure these Paragraphs, the House came to the following Resolution:

It is Resolved and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That in the Book, intituled, *A Sermon preached on January the 30th, 1701, in King Henry the Seventh's Chapel, before the Reverend Clergy of the Lower House of Convocation*, by W. Binckes, D. D. a Proctor for the Diocese of Litchfield and Coventry; there are several Expressions that give just Scandal and Offence to all Christian People.

Then it being proposed to Burn this Sermon, this Question was put, Whether this Sermon shall be Burnt?

It was Resolved in the Negative.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Resolution above recited shall be communicated to the Lord Bishop of Litchfield and Coventry.

The Resolution and Proceedings of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, on Saturday the 16th of May, 1702, upon Two Passages in the Pamphlet, intituled, I. Reasons for Addressing His Majesty to invite into England their Highnesses, the Electress Dowager and the Electoral Prince of Hanover. And likewise, II. Reasons for Attainting and Abjuring the pretended Prince of Wales, and all others pretending any Claim, Right, or Title from the late King James and Queen Mary. With Arguments for making a vigorous War against France. §

Die Sabbati, 16 Maii, 1702:

Complaint being made to the House, of Two Passages in the Pamphlet, intituled, I. Reasons for Addressing His Majesty to invite into England their Highnesses, the Electress Dowager and the Electoral Prince of Hanover. And likewise, II. Reasons for Attainting and Abjuring the pretended Prince of Wales, and all others pretending any Claim, Right, or Title from the late King James and Queen Mary. With Arguments for making a vigorous War against France. The Passages were read to the House, and are as followeth, viz.

It appears from History, that all free People have set aside the Children of Tyrants for Reasons of eternal and universal Force, as inheriting the Principles and Designs of their Parents, bearing an Af-

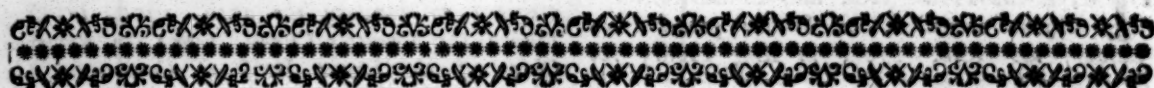


fection to their Friends, and owing a Revenge to their Enemies, as more likely to grasp at a greater Power than even their Parents, the better to secure themselves from their Disgrace, and being under extraordinary Obligations to those foreign Potentates who protected or restored them.

XXXI. In fine, whether the Abjuration be penal or voluntary, (for I cannot doubt of one or the other) I hope Care will be taken that it be tendered, as I said before, to all manner of Persons, not excepting the King's Majesty, or her Royal Highness the Princess of Denmark. For all the Securities we give to them, they owe this Security to us. Not that I doubt either of them, from which I am the farthest of any Man in the World: But they both of them very well know what Stories and Surmises our Enemies have been actively spreading to amuse and intimidate the People; they have whispered horrible

Things of blind and clancular Bargains, but CÆSAR's Wife ought to be unsuspected as well as innocent.

It is Resolved and Declared, by the Lords Spiritual and Temporal in Parliament Assembled, That there are in the Pamphlet, intituled, I. Reasons for Addressing His Majesty to invite into England their Highnesses, the Electress Dowager, and the Electoral Prince of Hanover. And likewise, II. Reasons of Attainting and Abjuring the pretended Prince of Wales, and all others pretending any Claim, Right, or Title from the late King James and Queen Mary. With Arguments for making a vigorous War against France; Assertions and Insinuations scandalous and dangerous, tending to alienate the Affections of the Subjects of this Kingdom from Her Majesty, and to disturb the Peace and Quiet of the Kingdom.



L. The Evidence given at the Bar of the House of Commons, upon the Complaint of Sir JOHN PAKINGTON, against WILLIAM Lord Bishop of Worcester, and Mr. LLOYD, his Son. Together with the Proceedings of the House of Commons thereupon. 1702. 2 A. \*

Lune 2 die Novembris, 1702.

A Complaint being made to the House by Sir John Pakington, against the Lord Bishop of Worcester, and Mr. Lloyd his Son, relating to the Rights and Privileges of the House of Commons;

Resolved,

That a Day be appointed to take into Consideration the said Complaint.

Ordered, That the same be taken into Consideration upon Wednesday the Eighteenth Day of November Instant.

Mercurii 18 die Novembris, 1702.

The House (according to the Order of the Day) proceeded to take into Consideration the Complaint made by Sir John Pakington, the Second Instant, against the Lord Bishop of Worcester, and Mr. Lloyd his Son, relating to the Rights and Privileges of the House of Commons. And Sir John Pakington in his Place acquainted the House, That he had reduced the Matter of the said Complaint into several Heads, which he read in his Place, and are as follows.

I. **T**HAT soon after the last Parliament rose, the Bishop of Worcester took upon him to send to me to desist from standing to be elected Knight for that County, and to threaten me, That if I would not desist, he should think himself obliged to speak against me to his Clergy.

II. He sent some Letters himself, and his Secretary sent others, to several of his Clergy, with Directions to make what Interest they could against me in their several Parishes, and where they could not prevail with such who voted singly for me in the last Election, to give a Vote for one or both the other Candidates, they should desire them to stay at home; and in order to this, his Lordship sent them Copies of the Poll of their respective Parishes.

III. He aspersed me to his Clergy, branding me and my Ancestors with several Vices; and at his Confirmation and Visitations solicited his Clergy to vote against me, representing me as very unfit to serve in Parliament, and threatening them with his Displeasure, if they did not vote against me.

IV. He aspersed me and my Ancestors to several of the Laity, who were his Tenants, and threatened them, That if they would not vote against me, they should never renew any Estate under him, and that he would set such Marks upon them, that his Successors should not suffer them nor their Children to renew any more.

V. Mr. Lloyd, the Bishop's Son, aspersed me, and gave scandalous Characters of me to several Freeholders, whom he solicited to vote against me, and told them, I voted for bringing in a French Government.

VI. The Bishop's Secretary aspersed me to several Freeholders in the like Manner, representing me as unfit to sit in the House, threatening them with the Bishop's Displeasure; and said, They might as well vote for the Prince of Wales as for me.

\* Mercurii 25 Die Novembris, 1702. Ordered, That the Evidence given at the Bar of this House, upon the Charge of Sir John Pakington, against William Lord Bishop of Worcester, and Mr. Lloyd his Son, be printed; together with the Proceedings of this House thereupon. Paul Jordrell, Cl<sup>r</sup> Dom<sup>r</sup> Com<sup>r</sup>.

After which, the Witnesses to the respective Heads were severally called in and examined at the Bar thereunto, viz.

Mr. *William Norton* being examined, saith That he had a Letter from the Lord Bishop of *Worcester's* Secretary, Mr. *Evans*, that the Bishop would speak with him; that he went accordingly that Night to wait upon his Lordship; and upon his attending his Lordship, his Lordship told him, That he took it unkindly that he made Interest for Sir *John Pakington*; That his Lordship had sent his Bailiff to engage Votes for Mr. *Bromley* and Mr. *Walsh*, and he was sorry that this Examinant should be for his Enemy Sir *John Pakington*; and that his Lordship would send to Sir *John Pakington*, to desist from standing for Knight of the Shire; and if he would not desist, his Lordship was to visit his Clergy, and he would set Sir *John Pakington* out in his Colours: The said Examinant being asked, what Reasons his Lordship gave, why Sir *John Pakington* was his Enemy, said, He did not give him any Reasons, but that his Lordship believed he would do any thing in his Power to ruin him.

Mr. *Charles Stephens*, Rector of *Hampton Lovet*, being examined, saith, That on the 30th of June last, he received a Letter from the Lord Bishop of *Worcester*, under his own Hand, to attend him at *Worcester* before his Lordship went his Visitation; this Examinant attended his Lordship accordingly, who desired this Examinant to deliver a Message to Sir *John Pakington*, to desist from standing for one of the Knights of the Shire; this was in the Presence of the Chancellor; He said, that Sir *John* should name any body whom he pleased, and that his Lordship should take it very ill if any of the Clergy Voted for Sir *John Pakington*; and if any of his Tenants did, they should not renew their Leases in his Time, and he would leave such Intimation to his Successors as should make them of his Mind; and that if Sir *John* would not desist, he should be obliged to speak against him at the Visitation. This Examinant being asked what Reasons the Bishop gave for his being against Sir *John Pakington*, he said his Lordship urged against him the Pamphlet written in Defence of the Bill against the Translation of Bishops: Being asked if he knew of any that had dispersed any of those Pamphlets; he said, that the Bishop said, That Sir *John Pakington's* Servants had dispersed them; but this Examinant saith, that he had none given him, but half a Dozen which were directed to him, he knows not by whom, but believes they came no further than from *Worcester*, being brought by one *Davies* a Carrier, of *Wich*, as he thinks; being asked several Questions about divers Pamphlets, if he had seen them, he said, he had bought one at *Worcester*, being a Vindication of the Bill against the Translation of Bishops, and that he had seen another, being a pretended Answer, which was sent him in a blank Case from *London*, he knows not from whom, and that he never dispersed any, being always cautious in such Matters: Being asked, if that Cover was Frank'd with Sir *John Pakington's* Name, he said, it was not. This Examinant saith, That after Dinner, at the Visitation at *Bromsgrove*, the Lord Bishop said, every body might expect Justice from him, but not Favour, if they Voted for Sir *John Pakington*. Being asked, Whether the Bishop charged him upon his Canonical Obedience, he

said No, but that his Lordship told Mr. *Bolles* of *Hagley*, who said he could not Vote as the Bishop desired him, being obliged by his Patron to Vote for Sir *John Pakington*; the Bishop replied, And are you not obliged to me? Have you not lately sworn Canonical Obedience? I am sure you have. This Examinant being asked, if he had any Living, he said that Sir *John Pakington* had presented him to *Hampton Lovet*. He said further, That his Lordship charged several Immoralities upon Sir *John Pakington*, and being asked the Particulars, said, he charged him with Drunkenness, Swearing, and Whoredom. That his Lordship insisted at his Visitation very much upon the Pamphlets, particularly that Passage about cutting down Wood; and his Lordship said, that he could give a very good Account of that; and that there were divers Passages in the Pamphlets, reflecting upon several Bishops. That after Dinner, at the Visitation at *Bromsgrove* aforesaid, his Lordship's Secretary, Mr. *Evans*, stood at the Door to endeavour to keep every body in the Room until his Lordship had particularly spoken to them, and was not willing to let any one go out but this Examinant.

Mr. *John Cbeattle* being examined, saith, That he was at the Visitation at *Bromsgrove*, in July last; that he met Mr. *Evans*, the Lord Bishop's Secretary, on the Stairs-head, who pressed him very much to go in to his Lordship, which this Examinant was unwilling to do; and being desirous to know the Business the Lord Bishop would speak to him of, Mr. *Evans* told him, my Lord expected he should Vote for Mr. *Bromley* and Mr. *Walsh*. This Examinant told him, that he was engaged, for he had promised Sir *John Pakington*: That the Secretary told him in great Anger, That then he must not expect to come within his Lordship's Door any more. He says, That he is a Receiver of some of the Bishop's Rents, and that he voted only for Sir *John Pakington*.

Being ask'd a Question which related to the said Election; but that being a Discourse that the Lord Bishop had with him alone, the Examinant said he was Receiver of the Bishop's Rents, and that he desired the Judgment of the House, whether it was fit for him to relate that, and then withdrew. And the House did not think fit to examine him to that Point, but called him in to other Matters.

Mr. *Thomas Wellens*, Curate of *Alfrick* and *Lusley*, being called in and examined about a Letter sent to him by Mr. *Evans*, the Bishop's Secretary, Mr. *Wellens*, and the aforesaid Mr. *Cbeattle*, proved it to be Mr. *Francis Evans*, the Bishop's Secretary's Hand. The Letter was read, and is as followeth.

*Alfrick.*

John Field	P
Reynold Barbor	P
William Woodcock	P
Sam. Hall	P
Jos. Joyner	P
John Gillam	P
Richard Kendrick	P
Walter Meeks	P
Sam. Meeks	P
Tho. Smith	P
Fran. Skinner	P
Richard Portman	P. B

*Lusley.*

Edmund Kinnerd	P
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Rich;



Rich. Markham P.W  
Sam. Smith B.W  
Christopher Gorey W

Worcester, 30 June, 1702.

Mr. Wellens,

MY Lord finds that the Freeholders at Alfrick and Lulsley Voted as above, the last Election, Twelve of them singly for Sir John Pakington. His Lordship does not think him a fit Person to represent the County in Parliament, for many Reasons, and therefore desires you'll use all the Interest you have in the Gentlemen above to Vote for Mr. Bromley and Mr. Walsh, and in Case they are still engaged for Sir John P. if they do Vote, desire them to give a second Vote either for Mr. Bromley or Mr. Walsh, or rather to stay at Home, and so not Vote at all: Whatever Service you can do in this Affair, will be very kindly taken by his Lordship. If there be any other Freeholders that did not Vote at last Election, his Lordship desires you'll endeavour to prevail with them to Vote for Mr. Bromley and Mr. Walsh. I am

Your Friend and Servant,

Fra. Evans.

For the Rev. Mr. Wellens, Curate of Alfrick and Lulsley. These.

The said Mr. Wellens being farther examined, saith, That some Time after, he met Mr. Evans at Worcester, and told him he had received his Letter, but that it came too late, his Neighbours being engaged before.

Mr. Thomas Pountney, Rector of Fladbury, being examined, saith, That he did receive a Letter from the Lord Bishop of Worcester, by one Taylor, an Apparitor; and the Letter being shewed him, he owned it to be the same Letter, signed by his Lordship's own Hand. He saith, That he shewed the Letter to Mr. Hodge, as the Bishop desired him in the said Letter, The Letter was read, and is as follows, viz.

Hartlebury, July 29, 1702.

SIR,

I Think I have more Reason to hope for something of Consideration from you, than from most others of the Clergy of this Diocese, and something also more from the Freeholders in your Parish, than in most other Parts of the County; and therefore I thought I had Reason to take it ill of your Neighbours, that they should give their Votes as they did, for the choosing of Sir J. Pakington to be Knight of the Shire, when, in order to that very Election, he had published Two Libels, full of horrible Lies, against myself, and several others of the Bishops, that had never given him the least Provocation. This grieved me much, but yet I had wherewith to comfort myself, in believing that those Libels might not have come to their Knowledge; tho' as I since understand great Care was taken by Sir John's Agents to publish them all over your Neighbourhood. But now since, I understand there is a Third Libel come abroad, which is written against me in particular. The declared Cause of it is not only my opposing Sir J. P.'s Election,

which, after my coming into the Country, and finding his Libels published among my Tenants by his Servants, I sent him Word I thought myself obliged to do, unless he would be pleased to desist from standing, as I earnestly desired him to do more than once: But this Author hath found, that I was the Writer of a printed Half Sheet, called, *The Character of a Churchman*, and that this was written against Sir J. P. for hindering his Election; and for this he scourges me most unmercifully, with such a Tongue as that St. James describes. For that *Character of a Churchman*, I do declare to you in the Presence of God, That I neither writ it, nor know the Author of it; but I certainly know, that Sir J. P. is not once mentioned in it, nor had I at the Time when that was printed any Breach with Sir J. P. nor Occasion to do this with respect to the Election, for it was printed before I came to London, and that was before the Dissolution of the former Parliament, which if I had foreseen, I had certainly staid longer in the Country. After all this, it is true that I sent a great Number of those Half Sheets into the Country, as I did of such other small Things, upon several Accounts. They were sent chiefly on the Account of our unhappy Differences in Convocation, and for promoting the most pious Designs of Reformation. On this last Account it was that I sent this *Character of a Churchman*, without making any Reflection upon any particular Person. I did indeed know, that the Devil would be mad at me for it, and now I have found the Effect of his Wrath: He hath set a Son of his to write against me, which I thank God is the worst he can do. This Account I have given you of this Third Libel, in Hopes it may have some Effect upon you and your Neighbour Mr. Hodge, to whom I desire you to shew what I have written. I hope you will both of you consider, whether any such Promise as that you have made to this Gentleman, to make him your Representative in Parliament, can oblige you to any thing else but Repentance of your having made such a Promise, and to bring forth Fruits meet for Repentance. For my Part, I leave this upon your Souls, desiring you both to do in this Matter as you think you can best answer it to God at the great Day, which I doubt not you believe, and expect as well as I. I pray God direct you. I am

Your Faithful Friend

and Diocesan,

W. Worcester.

The Enclosed is a List of the Voters from Fladbury at the last Election. I pray God direct them this Time to Vote better, or to stay away.

Fladbury.

Hen. Cocks	P	H. Wm. Tomlins	P
John Knowles	P	M. John Francis	P
William Cole	P	M. Wm. Gibbs	P
Tho. Weston	P	Rich. Tayler	P
Richard Hilyard	P	Rich. Fandy	P
Jos. Ganderton	P	H. M. Arth. Charlet	P
John Bachelor	P	H. M. Rich. Farr	P
Tho. Day	P	B. Tho. Barks	B.W
HM. Tho. Woodward	P	Tho. Hornblow	P

James

James Benson	P	John Hopkins	P
H. M. Tho. Sanders	P	Will. Kings	B. W.
Edward Marshall	P	Will. Haywood	B
John Bluck	P	H. M. Jos. Charlet	P. B
John Smith	P	S. B. John Sale	P
Arth. Gutteridge	P	B. Will. Abry	P
John Weaver	P	Will. Bushell	P
Will. Francis	P	A. M. Rob. Wright	P
Cl. Perks	P	Barth. Hopkins	P
John Hopkins	P	St. B. John Moor	P
M. Will. Weston	P	Richard Bushell	P
S. G. Jeffrey Hopkins	P	John Bluck	P
M. Hen. Gibbs	P	Tho. Francis	P

To the Reverend Mr. Pountney, Rector of Fladbury.

This Examinant being ask'd about Pamphlets, he saith, That *The Character of a Churchman*, was brought to him by the Churchwardens, who receiv'd it with the Proclamation from the Apparitor.

Sir John Pakington produced another Letter, directed, To the Reverend Mr. Mugg, Rector of Inkberrow; which Mr. Cheatle aforesaid proves to be the Lord Bishop's Hand. The said Letter from the Bishop was enclosed in a Letter from Mr. Mugg to Sir John Pakington, and delivered by Mr. Mugg to Sir John Pakington's Servant, who deliver'd it to his Master. The Letters are as follow, viz.

S I R,

I HAVE here enclosed the Bishop of Worcester's Letter, which deterr'd me from coming to your last Election, against my own most earnest Inclination, to attend and promote it as formerly I did; and refer to Mr. Appletree, and other Gentlemen, to say what Influence it had more than my single Vote, with Respect to my Age and longer Residence in the County than others of the Clergy. But this Bishop has been so severe in promoting and abetting unjust Prosecutions against me, to my vast Damage and Loss of Estate in another Place. And since his coming into this Diocese have I just Cause to complain of that want of Discipline, which from his Consistory Court should have been exerted against Lewdness in my Parish; which I take worse than his repeated Endeavours to deprive me of my Estate. I would lay the Matters in particular, and give Personal Testimony in several Instances, if I may be permitted a further Day. But *Thursday* next must attend a Commission then held at *Nottingham*: Afterwards, as I have Intimation, all Excuses and Delays set aside, shall be ready to appear, not only to serve you in this Cause, but for necessary vindicating the Right of the Commons, and that Property of the Subject that is infringing'd by such Means and Methods as I know this Bishop has used. I am, Sir,

Your most Faithful

Humble Servant,

Hen. Mugg,

15 Nov. 1702.

Vicar of Inkberrow.

To the Honourable Sir John Pakington, Bart. Member of Parliament, humbly present.  
VOL. VIII.

S I R,

July 27, 1702.

YOU cannot but have heard, and probably have seen how the Bishops of this Church in general, and Five or Six of them in particular, have been abused with impudent Lies in two Libels that were published by Sir John Pakington almost a Year since, in order to his last Election. At that Time I had not given him the least Provocation; and for the other abused Bishops, few of them knew his Face. Since that Time, finding at my Return from London, where I was all the while he was libelling me in the Country, that he had published these Libels, some of them with his own Hands, and the rest by his Agents, I could not but think myself obliged by all honest Ways to oppose his Election, if he would stand; which I sent to him three Times to let him know, and to desire he would forbear.

Hereupon there comes out a third Libel against me, which I have only seen, but could not get a Copy of it. I never saw any thing writ with such a furious Rage of railing, and scoffing, and lying; which, I thank God, can do me no Hurt, nor will it do him Service, if I may so call it, in promoting his Election, which I think would be the greatest Hurt that could happen to him.

It is for the preventing of this that I write to my Friends, earnestly to desire them to get what Votes they can for Mr. Bromley and Mr. Walsh; and to keep away as many as they can of them that will Vote for Sir John Pakington.

Your Diligence in this Matter will lay a very great Obligation upon,

Sir,

Your Faithful Friend,

and Diocesan,

W. Worcester.

I have sent you the enclosed, to shew you how the Votes of your Parish went at the last Election.

To the Reverend Mr. Mugg, Rector of Inkberrow.

Inkberrow.

John Phillips	B	Tho. Marshall	P. B
John Bennet	P	George Court	B
John Gore	W	Hen. Dyson	B
Job Watts	P	Robert Boney	B
William Walford	P	William Wren	B
Geo. Darby	P	Robert Willis	P
Rich. Eaton	P	Tho. Bristow	P
William Barber	B. W	Richard Dewce	P
Hen. Hunt	P	Henry Glover	P
Tho. Huntles	P	Tho. Tomkins	P. B
Hen. Smith	P	Tho. Ganderton	P
Edward Millard	P	Walter Steward	P
Edward Griffin	P	John Harbage	P
Edward Harriot	P	James Hemmings	P
Sam. Tandy	P	William Harvey	B. W
Rob. Biddle	P	Hum. Eaton	P
Nich. Hoblins	P	William Mallard	P
Tho. Hopkins	P	Tho. Lucas	P. B
Geo. Gore	P. W	William Soley	P
John Churchly	P	Robert Willis	P
John Appletree	P. B	Mich. Jones	P. B
John Sheldon	P	William Hunt	P. B
Tho. Walford	P. B		

Z

Mr.



Mr. *Thomas Hodge*, Clerk, being examined, saith, That the Lord Bishop of *Worcester* solicited him to Vote against Sir *John Pakington*; and then would have persuaded him to stay at home: But he said, he had given his Promise to Sir *John*. His Lordship told him, that if he Voted for Sir *John Pakington*, he should think him led by wicked and carnal Principles. His Lordship said, that Sir *John* had asperfed him: This Examinant said, he hoped not. His Lordship told him of a Book, and said, he believed he had it; which this Examinant denied. His Lordship proceeded then to give some Account of the Book, and to vindicate himself; and said, that Sir *John Pakington* was a Whoremonger, Drunkard, and Swearer; and no such were fit to be Law-Makers. This Examinant told his Lordship, he was engaged to go to give his Vote: The Bishop said, That Sir *John Pakington* had asperfed him and other Bishops: And in Conclusion his Lordship said, Whoever Voted for Sir *John Pakington*, he should not think him fit to be a Clergyman. And when his Lordship renewed the Discourse another time, this Examinant told him of his Promise: His Lordship said, It was an ill thing, and that this Examinant could not think himself obliged to do an ill thing. Being asked, if the Bishop did urge any thing of Canonical Obedience; he answered, that he said nothing of it.

Mr. *William Bolles* of *Hagley*, being examined, saith, That at the Visitation at *Bromsgrove*, the Lord Bishop of *Worcester* told this Examinant, That being now come into his Lordship's Diocese, he expected he should not give his Vote for Sir *John Pakington*; and if he did, he must expect no Favour from his Lordship. This Examinant told his Lordship, that he had great Obligations to his Patron, to whom he had promised to vote for Sir *John Pakington*. The Bishop told him, that he had Obligations to him, and that he had lately sworn Canonical Obedience to him. This Examinant said to the Bishop, That Sir *John Pakington's* Family had been always of great Repute; and asked the Bishop his Opinion of the Lady *Pakington*, who was said to be the Author of *The Whole Duty of Man*; his Lordship replied, That Lady was a very excellent Woman; but that Sir *John* had inherited the Vices of the Males of his Family, but none of the Virtues of the Females. Being asked whether the Bishop had given him any Preferment; he said, his Lordship had given him a small *Prebend* in the Church of *Litchfield*.

Mr. *Thomas Gibson* of *Perthore*, being examin'd, saith, That the Lord Bishop of *Worcester* first spoke to him at the Confirmation at *Perthore*, about three Days before the Visitation at *Evesham*, concerning Voting against Sir *John Pakington*; and solicited him much to vote against him. The Bishop told him, That Sir *John* was a very ill Man, and very unfit to represent the Country. He told his Lordship, he was under an Obligation, having given his Word. The Bishop said, that if this Examinant gave his Vote for Sir *John Pakington*, he should think that this Examinant thought his Lordship not fit to be his Bishop. After this, at the Visitation at *Evesham*, the Lord Bishop called this Examinant before the whole Clergy, and asked him if he had considered of what he had spoke to him

at *Perthore*: He told his Lordship, that he hoped he had been satisfied with his Answer: His Lordship said he was not, and added, that if this Examinant voted for Sir *John Pakington*, he should look upon him to be the poorest, wretchedest, vilest, deluded Hypocrite in the World; and that they may know Sir *John Pakington's* Party, for the Papists and Quakers were for him: This Examinant replied, The Papists have no Votes, and the Dissenters and Fanaticks are of your Lordship's Side.

Mr. *William Thomas*, Clerk, being examined, saith, That he did receive a Letter from Mr. *Evans*, the Lord Bishop's Secretary, to vote for Mr. *Bromley* and Mr. *Walsh*; and that Mr. *Evans* said, that if this Examinant voted for Sir *John Pakington*, it would be taken to be in opposition to the Lord Bishop. This Examinant did also receive a Letter from Mr. *Lloyd*, the Bishop's Son, to the same purpose; adding further, that Sir *John Pakington* was no Friend to the Church.

Mr. *William Norton* was again call'd in, and being examined, saith, That the Lord Bishop of *Worcester* sent for him, and pressed him to give his Vote and use his Interest for Mr. *Bromley* and Mr. *Walsh*: This Examinant told his Lordship, he had given his Word to vote for Sir *John Pakington*: His Lordship said, Sir *John* was not a Man fit to sit in the House of Commons; That he was a Man that strikes at the Government; That he was debauched and lewd, and so was his Father and Grandfather; That his Father had filled him so full of Jacobitism, that it could not be rooted out: This Examinant said, That he thought Sir *John Pakington* was a True Church of *England* Man as by Law established; his Lordship replied, That he was of the Prince of *Wales's* Church. At another time his Lordship called this Examinant to him, and asked him if he had considered of what he had said; this Examinant said he had, but he could not depart from his Word which he had given. His Lordship said, Have not I shewed you Kindness in renewing your Lease? He replied, It was a very hard Fine he had paid. The Bishop said, Hard or easy, he should never renew again, as long as he lived; and that he would put such a Mark upon him, that he should never renew it in his Successor's time. A few Days after, Mr. *Evans*, the Bishop's Secretary, solicited this Examinant to Vote against Sir *John Pakington*, or if not, to stay at home, and not Vote at all, or else he should disoblige the Lord Bishop; and added, If you do Vote as his Lordship would have you, it will be something in your Way, for his Lordship would bear the Charge of a Law-Suit this Examinant was engaged in.

Mr. *Robert Fiddin* being examined, saith, That some time before the last Election, the Lord Bishop of *Worcester* sent for him on a Sunday in the Evening, and told him, he was resolved to make all the Opposition he could to Sir *John Pakington* in this Election, and if any of his Tenants voted for Sir *John Pakington*, they should never renew their Estates any more as long as he lived. He told his Lordship he could not vote against Sir *John Pakington*, because he had promised his Vote for Sir *John Pakington*; but to oblige his Lordship, he was willing to stay at home. His Lordship answered, he had as lieve he

he should run a Sword against him; as offer him that Affront; staying at home should not serve his turn: That unless this Examinant would vote against Sir *John Pakington*, he should never renew any thing with him; and he would set such a Mark upon him to shew his Successors, that neither this Examinant, nor any of his, should ever renew their Estates any more. This Examinant answered, My Lord, you have often told me, that I and my Ancestors have held our Estate under the Bishoprick for many Hundred Years, as appears by your Books; and I hope your Lordship will not do so ill a thing, as to ruin me and my Children: His Lordship replied, It is your own Fault, you may thank yourself for it. Being asked, Who he voted for? He said, for Sir *John Pakington* only.

Mr. *Robert Wilmot* being examined, saith, That presently after Mr. *Lloyd*, the Lord Bishop's Son, came from *London*, before the last Election, he sent for this Examinant, and pressed him to give his Vote for Mr. *Bromley* and Mr. *Walsh*: This Examinant told him, that he had promised Sir *John Pakington* already. Mr. *Lloyd* told him, he was sorry; but he must not give him his Vote, for he was unfit to be a Parliament Man, for he was a Whoremonger and a Drunkard: He told this Examinant, then he must engage to stay at home and not vote; and bid him consider of it, and come to him again. Accordingly this Examinant went to Mr. *Lloyd* on *Monday*, who asked him if he had altered his Resolution of voting for Sir *John Pakington*: This Examinant insisted, that he had given his Promise: Mr. *Lloyd* told him he was acquitted from that Promise; for Sir *John* was a very unfit Person: That he inherited his Father's and Grandfather's Vices, and not his Grandmother's Virtues: That he would have him stay at home, and pretend Business; and then he would have persuaded him to pretend to be sick. But this Examinant still insisted that he had given his Promise to Mr. *Winington* to Vote for Sir *John Pakington*. Mr. *Lloyd* then told this Examinant, That Sir *John Pakington* voted for bringing in a *French* Government, and so did Mr. *Winington*, and all that Party: And if this Examinant did not please the said Mr. *Lloyd* in his Voting, this Examinant must never come near him more.

At the time of the Election Mr. *Lloyd* came to this Examinant, at the Booth where the Election was, and told him, he was better than his Word, for he had not only Voted for Sir *John Pakington*, but made Interest for him; and further told this Examinant, He would be even with him. And accordingly, when this Examinant was Hunting with him after the Election, he sent his Servants and broke open this Examinant's Stable-Door, and took away his Setting-Dog, and his Gun and Nets, which this Examinant had Leave from him to keep in the Lord Bishop's Manor, and the said Mr. *Lloyd* had often made use of them for his own Diversion: And when he complained to Mr. *Lloyd* about it, he reproached this Examinant for having Voted and made Interest for Sir *John Pakington*; and reminded him of his Promise at the Election, That he would be even with him. This Examinant further said, That he had been, before the Dog was taken, to wait upon the said Mr. *Lloyd*, and offered him to put away his Dog, Gun and Nets, if they gave him any Offence; and that Mr. *Lloyd* said, he need not do that, that those were Trifles; and there-

fore this Examinant thought he would not have seized his Dog: Mr. *Lloyd* replied, If I had told you what I intended; you would have sent your Dog away. This Examinant being asked, Whether there was any Warrant for breaking open his Stable, said, That he understood Mr. *Soley* had granted a Warrant to take his Dog and Nets; but that there was no Constable with them when they broke open the Door.

Mr. *Richard Griffin* being examined, saith, That Mr. *Lloyd*, the first Sunday after he came home, asked this Examinant whether he had promised his Vote for any one, and for whom; he replied, he had promised Sir *John Pakington*. Mr. *Lloyd* told this Examinant he did very ill to promise before the Lord Bishop came down; and that he should have my Lord's ill Will if he Voted for Sir *John Pakington*, for he was not a fit Man to sit in Parliament, for he aims to bring in a *French* Government. Four or five Days before the Election, Mr. *Lloyd* sent to this Examinant again, and desired him to vote for Mr. *Bromley* and Mr. *Walsh*. This Examinant replied, that he ought to be as good as his Word, having promised Sir *John Pakington*. Mr. *Lloyd* then told him, he should have the Lord Bishop's ill Will, and would have him stay at home. This Examinant then said, he would go, because he had promised. Upon that Mr. *Lloyd* replied, If you do go, I wish you may lie lame a Month after it. At another time, Mr. *Evans*, the Lord Bishop's Secretary, desired this Examinant to stay at home, and not appear for Sir *John Pakington*, for the Bishop would be very angry with him if he should. This Examinant further saith, that he had taken in a Piece of Land; and that Mr. *Evans* told this Examinant; that since he would not please my Lord Bishop in voting against Sir *John Pakington*, he would throw open his Inclosure; and accordingly the said Inclosure was twice thrown open, and his Quick Hedge taken away: And that one *Gregson*, a Servant of the Bishop's, told this Examinant that he did it by Mr. *Evans's* Order.

*John Harwood* being examined, saith, That some few Days before the last Election, there was a Meeting of some Neighbours, where Mr. *Evans*, the Bishop's Secretary, was present. Mr. *Evans* told the Company, they were all honest Men of one mind, except *Harwood*, pointing to this Examinant; for, says he, he is the only Man that will vote for Sir *John Pakington*, who is not fit to be a Parliament Man, for he is a Drunkard and a Lover of Women: Which put this Examinant into a Passion, and caused him to swear; and the said Mr. *Evans* pretended to number the Oaths by his Buttons. Afterward the said Mr. *Evans* sent the Bishop's Keeper in Mr. *Evans's* Name, to fetch this Examinant to him, who told him, he must pay five Pounds for Swearing, but if he would vote for Mr. *Bromley* and Mr. *Walsh*, he would remit it. This Examinant told him, he would consider of it. Mr. *Evans* told him, he had as good vote for the Prince of *Wales* as for Sir *John Pakington*. Being asked, who told him he would remit the Five Pounds; he answered, Mr. *Evans*.

*Thomas Twitty*, Gent. being examined, saith, That the Day before the last Election, being in the College Church at *Worcester*, just as his Lordship went out of the Church, Mr. *Evans* the Bishop's Secretary came to this Examinant, from his



his Lordship, and told him, That his Lordship hoped this Examinant would not vote for Sir *John Pakington*, for that Sir *John* was a very ill Man, and voted ill in the House of Commons. This Examinant replied, if he voted at all, he should vote singly for Sir *John Pakington*. And this Examinant asked Mr. *Evans*, What was the Reason his Lordship made such Interest against Sir *John Pakington*. He told him, that Sir *John Pakington* had abused his Lordship; and asked this Examinant if he had seen *The Character of a Churchman, and Of a Low Churchman*. This Examinant asked him, if the Lord Bishop had wrote the Character of a Churchman: He said, he could not tell, but that his Lordship had seen and approved it; and that his Lordship did not think Sir *John Pakington* a fit Person to represent the County. And then he was ordered to withdraw.

Sir *John Pakington* inform'd the House, That he had several other Persons to speak to the same Particulars that the Witnesses had already given their Evidence to: But that having detain'd the House so long already, he would submit what his Witnesses had said, to the Judgment of the House, and so withdrew.

Whereupon the House, after mature Consideration, came to the following Resolutions.

*Resolved Nemine Contradicente,*

That Sir *John Pakington* has by Evidence fully made out the Charge which he Exhibited against the Lord Bishop of *Worcester*.

*Resolved Nemine Contradicente,*

That Sir *John Pakington* has by Evidence fully made out the Charge against Mr. *Lloyd*, the said Lord Bishop's Son.

*Resolved,*

That it appears to this House, That the Proceedings of *William* Lord Bishop of *Worcester*, his Son, and his Agents, in order to the hindering of the Election of a Member for the County of *Worcester*, has been Malicious, Unchristian, and Arbitrary, in high Violation of the Liberties and Privileges of the Commons of *England*.

*Resolved,*

That an humble Address be presented to Her Majesty, That she will be graciously pleased to remove *William* Lord Bishop of *Worcester* from being Lord Almoner to Her Majesty. \*

*Ordered,*

That the said Resolution and Address be presented to Her Majesty by such Members of this House as are of Her Majesty's most Honourable Privy-Council.

\* The Lords, alarm'd at these warm Proceedings of the Commons, against a Member of their Illustrious Assembly, and one who was eminently conspicuous for his Piety, Charity, and Learning, did on the 19th agree upon an Address to the Queen, wherein they humbly took Leave to represent to her Majesty, "That it is the undoubted Right of every Lord of Parliament, and of every other Subject of *England*, to have an Opportunity of making his Defence, before he suffer any sort of Punishment; and therefore humbly desired Her Majesty, That she would be pleased not to move the Lord Bishop of *Worcester* from the Place of Lord Almoner, nor to shew any Mark of her Displeasure towards him, 'till he be found Guilty of some Crime, by due Course of Law." Which being presented to the Queen on the 20th, Her Majesty made the following Answer:

*I agree that every Peer and Lord of Parliament, and indeed every other Person, ought to have an Opportunity of being heard, to any Matters objected against him, before he be punished. I have not yet received any Complaint of the Bishop of Worcester, but I look upon it as my undoubted Right to continue or displace any Servant, attending upon my own Person, when I shall think proper.*

The same Day the Lords Resolved and Declared unanimously, "That no Lord of that House ought to suffer any sort of Punishment, by any Proceedings of the House of Commons, otherwise than according to the known and ancient Rules and Methods of Parliament." On the other Hand, Sir *Edward Seymour*, Comptroller of Her Majesty's Household, having attended the Queen with the Resolution and Address of the Commons, for the removing the Bishop of *Worcester* from being Lord Almoner to Her Majesty, she was pleased to answer, *Ut Supra*. *Annals of Queen Anne*, Vol. I. Page 145, 146.

*Ordered,*

That the further Consideration of the Matter relating to the Lord Bishop of *Worcester*, be adjourned till this Day Sevenight.

*Ordered,*

That Mr. Attorney General do prosecute Mr. *Lloyd*, the Lord Bishop of *Worcester*'s Son, for his said Offences, after his Privilege as a Member of the Lower House of Convocation is out.

*Veneris 20 die Novembris 1702.*

Mr. Comptroller reported to the House, That their Resolution and Address to Her Majesty for the removing *William* Lord Bishop of *Worcester*, from being Lord Almoner to Her Majesty, had been presented to Her Majesty; and that Her Majesty was pleased to give this most gracious Answer:

*I Am very sorry that there is Occasion for this Address against the Bishop of Worcester: I shall order and direct, that he shall no longer continue to supply the Place of Almoner, but I will put another in his Room to perform that Office.*

*Resolved,*

That the most humble Thanks of this House be returned to Her Majesty, for Her Majesty's most Gracious Answer to their Address relating to *William* Lord Bishop of *Worcester*.

*Ordered,*

That Mr. Comptroller of Her Majesty's Household, do return the said most humble Thanks of this House to Her Majesty.

*Mercurii 25 die Novembris 1702.*

The Order of the Day for taking into further Consideration the Matter relating to the Lord Bishop of *Worcester*, being read;

*Ordered,*

That the Evidence given at the Bar of this House, upon the Charge of Sir *John Pakington* against *William* Lord Bishop of *Worcester*, and Mr. *Lloyd* his Son, be printed; Together with the Proceedings of this House thereupon.

*Ordered,*

That the Clerk's Books in relation to the said Evidence be examined: And that Mr. Speaker do take Care of the Printing the said Evidence and Proceedings.

*Ordered,*

That the further Consideration of the Matter relating to the Lord Bishop of *Worcester*, be adjourned till this Day Sevenight. The further Consideration of this Affair, was twice adjourn'd, and then dropt.

LI. *Proceedings in the House of Commons, House of Peers, and in the Court of Queen's-Bench, in the Great Case of ASHBY and WHITE, &c.* 1703, 1704, 2 & 3 Ann. Reg.

**M**ATTHEW ASHBY, having commenc'd and prosecuted an Action at Common Law, against *William White* Mayor of *Aylesbury*, and others, the Constables of that Town, for refusing to receive his Vote at an Election of Burgeſſes to ſerve in Parliament, for the ſaid Borough, but being caſt, he brought a writ of Error into the Houſe of Lords, who, upon ſtrict Examination of Witneſſes, and upon mature Deliberation, gave Judgment in Favour of *Aſhby*. The Commons looking upon theſe Proceedings as an Inroad on their Privileges, proceeded as follows.

*Debates of the Houſe of Commons, upon the Great Queſtion, Whether an Action lies at Common Law for an Elector, who is denied his Vote for Members of Parliament?*

*Lunæ 17 die Januarii, 1703.*

The Houſe being inform'd, That there had been an Extraordinary Judgment given in the Houſe of Lords upon a Writ of Error from the Court of Queen's-Bench, in a Cauſe between *Matthew Aſhby* and *William White*, wherein the Privileges of the Houſe were concerned, appointed ſome of their Members to ſearch the Journals of the Houſe of Lords as to their Proceedings upon the ſaid Writ of Error, and to report the ſame to the Houſe.

They alſo ordered the ſame Members to inſpect the Journals of the Houſe of Lords, as to what they had done formerly in the Cauſe of *Soame* and *Barnardſton*; and likewiſe to report that Matter to the Houſe.

*Martis 18 die Januarii, 1703.*

The Houſe ordered, that the Members who were appointed to ſearch the Journals of the Houſe of Lords as to their Proceedings upon a Writ of Error from the Court of Queen's-Bench, in the Cauſe between *Aſhby* and *White*, ſhould likewiſe ſearch the ſeveral Offices of the Court of Queen's-Bench, for the Record of the Judgment, and all other Proceedings there in that Cauſe, and report the ſame to the Houſe.

*Jovis 20 die Januarii, 1703.*

Ordered, That the Report, with relation to the Proceedings of the Houſe of Lords and Court of Queen's-Bench, in the Cauſe of *White* and *Aſhby*, ſhould be made on the morrow Morning.

*Veneris 21 die Januarii, 1703.*

Mr. *Freeman* reported, That the Members appointed to ſearch the Lords Journals, touching

their Proceedings upon a Writ of Error from the Court of Queen's-Bench, in a Cauſe between *White* and *Aſhby*, and what the Lords had done in the Cauſe of *Soame* and *Barnardſton*, had ſearch'd the ſame accordingly; and he read in his Place what they found therein, and he deliver'd the ſame at the Table, where the ſame was read. And,

Mr. *Brewer* alſo reported, That the Members appointed had alſo ſearch'd the Offices of the Court of Queen's-Bench, for the Judgment and Proceedings there in the Cauſe of *Aſhby* and *White*, and had obtain'd a Copy of the Record of the Judgment, which he delivered in at the Table.

A COPY of the Record inter *ASHBY & WHITE*, & al.

*Placita coram Domino Rege apud Weſtmonaſterium de Termino Sancti Hilarii, Anno Regni Domini Willielmi Tertii, nunc Regis Angliæ, &c. decimo tertio, Rotulo 460.*

Bucks ſs. **M**ATTHEUS ASHBY ponit loco ſuo Robertum Greenway juniorem Attornatum ſuum verſus Willielmum White, & Richardum Talboys, Willielmum Bell, & Richardum Heydon, de placito transgreſſionis ſuper Caſum.

ſs. Willielmus White, Richardus Talboys, Willielmus Bell, & Richardus Heydon ponunt loco ſuo Johannem Burnham Attornatum ſuum verſus Mattheum Aſhby de placito predicto.

ſs. Memorandum quod alias ſcilicet Termino ſancti Michaelis ultimo preterito coram Domino Rege apud Weſtmonaſterium venit Mattheus Aſhby per Robertum Greenway juniorem Attornatum ſuum & protulit hic in Curia dicti Domini Regis tunc ibidem quandam Billam ſuam verſus Willielmum White, Richardum Talboys Willielmum Bell & Richardum Heydon, in custodia Mareſchalli, &c. de placito transgreſſionis ſuper Caſum, & ſunt pleg. de proſequendo ſcilicet Johannes Doe & Richardus Roe: quæ quidem Billa ſequitur in hæc verba; ſcilicet Bucks ſs. Mattheus Aſhby queritur de Willielmo White, Richardo Talboys, Willielmo Bell & Richardo Heydon, in custodia Mareſchalli Mareſchalliſæ Domini Regis coram ipſo Rege de exiſtentibus pro eo, videlicet quod cum viceſimo ſexto die Decembris Anno Regni Domini Willielmi Tertii nunc Regis Angliæ, &c. duodecimo è Curia Cancellarie ipſius Domini Regis nunc apud Weſtmonaſterium in Comitatu Middleſexie emanavit quoddam breve ipſius Domini Regis nunc tunc Vicecomiti Comitatus Bucks predicti directum, recitando quod dictus Dominus Rex de adviſamento & aſſenſu Concilii ſui pro quibuſdam arduis & urgentibus negotiis eundem Dominum

A a

Regem



Regem statum & defensionem Regni sui Anglie & Ecclesie Anglicane concernentibus quoddam Parliamentum suum apud Civitatem suam Westmonasterii sexto die Februarii tunc proximo futuro teneri ordinaverit & ibidem cum Prelatis Magnatibus & Proceribus dicti Regni sui colloquium habere & tractatum; Idem Dominus Rex nunc eidem tunc Vicecomiti Comitatus Bucks per dictum breve preceptum firmiter injungens quod facta Proclamatione in proximo Comitatu suo post receptionem ejusdem brevis tenenda de die & loco predictis duos Milites gladiis cinctos magis idoneos & discretos Comitatus predicti & qualibet Civitate Comitatus illius duos Cives & de quolibet Burgo duos Burgenes de discretioribus & magis sufficientibus libere & indifferenter per illos qui hujusmodi Proclamationibus interforent juxta formam Statuti inde editi & provisi eligi & nomina eorundem Militum Civium & Burgensium sic eligendorum in quibusdam Indenturis inter ipsum tunc Vicecomitem & illos qui hujusmodi electionibus interforent inde conficiendis licet hujusmodi eligendi presentes forent, vel absentes, inferi, eosque ad dictos diem & locum venire faceret; ita quod iidem Milites plenam & sufficientem potestatem pro se & Communitate Comitatus illius ac dicti Cives & Burgenes pro se & Communitatibus Civitatum & Burgorum predictorum divisim ab ipsis haberent ad faciendum & consentiendum hiis que tunc ibidem de communi Consilio dicti Regni ipsius Domini Regis nunc (favente Domino) contigerint ordinari super negotiis antedictis, ita quod pro defectu potestatis hujusmodi seu propter improvidam electionem Militum Civium aut Burgensium predictorum dicta negotia infecta non remanerent quovismodo & Electionem illam in pleno Comitatu ipsius tunc Vicecomitis factam distincte & aperte sub sigillo suo & sigillis eorum qui Electionibus illis interforent eidem Domino Regi nunc in Cancellarium suum ad dictos diem & locum certificaret, indilate remittens eidem Domino Regi alteram partem Indenturarum predictarum eidem brevi consutarum una cum brevi illo; quod quidem breve postea & ante predictum sextum diem Februarii in brevi predicto mentionatum, scilicet vicesimo nono die Decembris, anno duodecimo supradicto, apud Burgum de Aylesbury in dicto Comitatu Bucks, cuidam Roberto Weeden Armigero ad tunc Vicecomiti ejusdem Comitatus Bucks deliberatum fuit in forma Juris exequendum; Virtute cujus quidem brevis predictus Robertus Weeden Vicecomes Comitatus Bucks predicti ut prefertur tunc & ibidem existens postea & ante predictum sextum diem Februarii scilicet tricesimo die Decembris Anno duodecimo supradicto apud Burgum de Aylesbury predictum in dicto Comitatu Bucks fecit quoddam preceptum suum in scriptis sub sigillo ipsius Roberti Weeden Officii sui Vicecomitis Comitatus Bucks predicti Constabulario Burgi de Aylesbury predicti directum, recitantiem diem & locum Parliamenti predicti tenendi, proinde eos requirens & eis in mandato dans quod facta Proclamatione infra Burgum predictum de die & loco in eodem precepto recitatis causarent liberè & indifferenter eligi duos Burgenes Burgi illius de discretioribus & magis sufficientibus per ipsos qui hujusmodi Proclamationibus interforent juxta formam Statuti in talibus casibus editam & provisam & nomina dictorum Burgensium sic electorum licet presentes forent vel absentes inferi in qui-

busdam Indenturis inter dictum Vicecomitem & illos qui haberent interesse in hujusmodi Electionibus, & quod eos venire faceret ad diem & locum in eodem precepto recitatos, ita quod dicti Burgenes haberent plenam & sufficientem potestatem pro se & Communitate Burgi predicti ad faciendum & consentiendum hiis que tunc ibidem de communi consilio dicti Regni (favente Domino) contingerent ordinari super negotiis antedictis ita quod pro defectu hujusmodi potestatis aut propter improvidam electionem Burgensium predictorum dicta negotia infecta non remanerent & quod electionem indilate eidem tunc Vicecomiti certificarent, mittentes eidem Vicecomiti alteram partem indenturarum predictarum dicto precepto annexarum ut idem Vicecomes eandem certificaret dicto Domino Regi in Cancellaria sua ad diem & locum predictos; quod quidem preceptum postea & ante predictum sextum diem Februarii scilicet eodem tricesimo die Decembris anno supradicto apud Burgum de Aylesbury predictum in dicto Comitatu Bucks eisdem Willielmo White Richardo Talboys Willielmo Bell & Richardo Heydon ad tunc & usque ad & post retornatum ejusdem brevis Constabulariis Burgi de Aylesbury predicti existentibus in forma Juris exequendum deliberatum fuit; quibus quidem Willielmo White Richardo Talboys Willielmo Bell & Richardo Heydon ratione Officii sui predicti Constabulariorum Burgi predicti executio precepti illius de jure ad tunc & ibidem pertinuit, virtute cujus quidem precepti ac vigore brevis predicti Burgenes Burgi predicti existentes in ea parte debite premoniti postea & ante predictum sextum diem Februarii scilicet sexto die Januarii anno duodecimo supradicto apud Burgum de Aylesbury predicti coram eisdem Willielmo White Richardo Talboys Willielmo Bell & Richardo Heydon Constabulariis Burgi predicti assemblati fuerunt ad duos Burgenes pro Burgo illo eligendos secundum exigentiam brevis & precepti predictorum ac durante assemblatione illa ad intentionem illam & antequam hujusmodi duo Burgenes virtute brevis & precepti predictorum electi fuerunt scilicet die & anno ultimis supradictis apud Burgum de Aylesbury predictum in comitatu predicto idem Mattheus Ashby ad tunc & ibidem existens Burgens & Inhabitans Burgi predicti & Eleemosinas ibidem aut alibi ad tunc aut antea non recipiens sed debite qualificatus & intitulus existens ad suffragium suum ad eligendum duos Burgenes pro Burgo predicto secundum exigentiam brevis & precepti predictorum dandum coram eisdem Willielmo White Richardo Talboys Willielmo Bell & Richardo Heydon quatuor Constabulariis Burgi illius quibus tunc & ibidem debite pertinuit ad suffragium ipsius Matthei Ashby de & in premissis capiendum & allocandum parat. fuit & obtulit suffragium suum dare pro eligendo Thomam Lee Baronettum & Simonem Mayne Armigerum duos Burgenes pro Parlamento illo virtute & secundum exigentiam brevis & precepti predictorum, ac Suffragium ipsius Matthei Ashby ad tunc & ibidem de jure debuit admitti, et predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon sic Constabularii Burgi predicti tunc & ibidem existentes ad tunc & ibidem requisiti fuerunt per ipsum Mattheum Ashby ad suffragium ipsius Matthei Ashby predictum in premissis recipiendum & allocandum, iidem tamen Willielmus White



White Richardus Talboys Willielmus Bell & Richardus Heydon ad tunc & ibidem ut preferatur Constabularii Burgi predicti existentes premissorum non ignari sed machinantes & fraudulentem & malitiose intendentes eundem Mattheum Ashby in hac parte damnificare & de privilegio suo de & in premissis predictis impedire & totaliter frustrare eundem Mattheum Ashby suffragium suum in ea parte dare ad tunc & ibidem obstruxerunt, & ad tunc & ibidem penitus recusaverunt eundem Mattheum Ashby suffragium suum ad eligendos duos Burghenses pro Burgo illo ad Parliamentum predictum dare permittendum ac suffragium ipsius Matthei pro electione illa non receperunt neque allocaverunt ac duo Burghenses de Burgo illo pro Parlamento predicto Mattheo Ashby sic ut preferatur excluso sine aliquo suffragio ipsius Matthei Ashby ad tunc & ibidem virtute brevis & precepti predicti electi fuerunt in enervatione predicti privilegii ipsius Matthei Ashby de & in premissis predictis. Unde idem Mattheus Ashby dicit quod ipse deterioratus est & damnum habet ad valentiam ducentarum Librarum & inde producit Sectam, &c.

Et modo ad hunc diem scilicet diem Veneris proxim. post Octabas sancti Hilarii isto eodem Termino usque quem diem predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon habuerunt licentiam ad Billam predictam interloquendi & tunc ad respondendum &c. coram Domino Rege apud Westmonasterium veniunt tam predicti Mattheus Ashby per Attornatum suum predictum quam predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon per Johannem Burnham Attornatum suum: Et iidem Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon defendunt vim & injuriam quando &c. Et dicunt quod ipsi non sunt inde culpabiles & de hoc ponunt se super Patriam & predictus Mattheus Ashby similiter &c. Ideo veni inde Juratores coram Domino Rege apud Westmonasterium die Jovis proxime post octabas Purificationis beate Marie Virginis & qui nec &c. ad recognitionem &c. quia tam &c. idem dies datus est partibus predictis ibidem &c.

Postea continuato inde processu inter partes predictas de placito predicto per Juratum Patrie inde inter eos in respectu coram Domino Rege apud Westm. usque diem Mercurij proximo post Quindenam Pasche extunc proximam sequentem nisi Justiciarii Domini Regis ad Assisas in Comitatu predicto capiendas assignati prius die Lune nono die Martii apud Aylesbury in Comitatu predicto per formam Statuti, &c. venerint pro defectu Juratorum &c. ante quem diem dictus Dominus Willielmus Tertius nuper Rex Anglie &c. diem suum clausit extremum ac etiam ante eundem diem loquela predicta adjournata fuit per breve Domine Anne nunc Regine Anglie &c. de communi adjournamento coram eadem Domina Regina apud Westmonasterium usque; a die Pasche in tres septimanas ad quas quidem tres septimanas Pasche coram eadem Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum & prefati Justiciarii coram quibus, &c. miserunt hic Recordum suum coram eis hic in hec verba, scilicet, Postea die & loco infra contentis coram Edwardo Ward Milite Capitali Barone Scaccarii Domine Anne nunc Regine Anglie, &c. & nuper Capitali Barone Scaccarii Domi-

hi Willielmi Tertij nuper Regis Anglie & Thoma Knight Armigero hac vice associato eidem Edwardo Ward, & Thoma Bury Milite uno Barone Scaccarii dicte Domine Regine nunc & nuper uno Barone Scaccarii dicti nuper Regis Justiciariis ipsius Domine Regine ad Assisas in Comitatu Bucks capiendas assignatis per formam Statuti, &c. presente prefato Thoma Bury non expectato virtute brevis de si non omnes, &c. venerunt tam infra nominatus Mattheus Ashby quam infra scripti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon per Attornatos suos infra contentos & Juratores Jure unde infra fit mentio exacti similiter venerunt qui ad veritatem de infra contentis dicend. electi triati & jurati dicunt super Sacramentum suum quod predicti Willielmus White Richardus Talboys, Willielmus Bell & Richardus Heydon sunt culpabiles de premissis in narratione infra scriptis interius eis impositis modo & forma prout predictus Mattheus interius versus eos queritur. Et assidunt damna ipsius Matthei occasione infra contenta ultra Missas & custagias sua per ipsum circa Sectam suam in hac parte apposita ad quinque libras & pro Missis & Custagiis illis ad quadraginta solidos; sed quia curia dicte Domine Regine nunc hic de Judicio suo de & super premissis reddendo nondum advisatur, dies inde datus est prefato Mattheo Ashby coram Domina Regina apud Westmonasterium usque; diem Veneris prox. post crastinum Sancte Trinitatis de Judicio suo inde audiendo eo quod curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum; sed quia curia dicte Domine Regine nunc hic de Judicio suo de & super premissis reddendo nondum advisatur dies inde datus est prefato Mattheo Ashby coram Domina Regina apud Westmonasterium usque; diem Veneris proximum post tres septimanas Sancti Michaelis de judicio suo inde audiendo eo quod curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum, sed quia curia dicte Domine Regine nunc hic de Judicio suo de & super premissis reddendo nondum advisatur dies inde datus est prefato Mattheo Ashby coram Domina Regina apud Westmonasterium usque; diem Mercurij proximum post quindenam Pasche de Judicio suo inde audiendo, eo quod curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum, sed quia curia dicte Domine Regine nunc hic de Judicio suo de & super premissis reddendo nondum advisatur dies inde datus est prefato Mattheo Ashby coram Domina Regina apud Westmonasterium usque; diem Veneris proximum post crastinum Sancte Trinitatis de judicio suo inde audiendo eo quod curia dicte Domine Regine nunc hic inde nondum, &c.

Ad



Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum sed quia curia dicte Domine Regine nunc hic de iudicio suo de & super premissis reddendo nondum advisatur dies inde datus est prefato Mattheo Ashby coram Domina Regina apud Westmonasterium usque diem Sabbati proxime post tres septimanas sancti Michaelis de iudicio suo inde audiendo eo quod curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum super quo visis & per curiam dicte Domine Regine nunc hic plenius intellectis omnibus & singulis premissis maturaque deliberatione inde habita consideratum est quod predictus Mattheus Ashby nil capiat per Billam suam predictam sed pro falso clamore suo sit inde in misericordia, &c. Et predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon eant inde sine die, &c.

*Mr. Speaker*, (Mr. Harley, afterwards Earl of Oxford) after the Reports were over, told the House, That he thought it to be his Duty to put them in Mind of the great Consequence and Importance of this Matter, and that it behoved them to take very great Caution in their Proceedings, not only that the Grounds and Foundation be good, but also that the Method and Manner of treating it be according to antient Usage and Custom of Parliament: And to that End he desires the House would give him Leave to state this Matter, as it appear'd to him, and according to what occur'd upon the sudden to his Memory, that the House might take proper Methods upon this Occasion.

Mr. Speaker then proceeded to give the House an Account of the State of Elections by Custom or Common Law, and that the great Alteration in Point of Elections, was in the Beginning of Hen. IV. Time, since whose Reign the Returns for Parliament have been made by Indenture. That by the Statute of 7 H. 4. there is a Method prescrib'd of Election and Return, and the Occasion he took to be this: H. IV. came to the Succession of the Crown by the Deposition of R. II. when the Parliament was sitting. That Parliament was continued to H. IV's Time: For tho' in the Rolls it was call'd a new Parliament, and Returns were made as by the Sheriffs of the Counties, and also by the Boroughs, as if it was a new Parliament; yet it was the same Parliament, for they were the same Men; and there were too few Days between one Parliament and the other, to have a new Election. But Henry IV. having made such an extraordinary Step, he would not leave it as a Precedent to be found out. Afterwards, when Times were a little more settled, in his seventh Year, and that Practice was necessary to be condemn'd, it was provided, at the great Complaint of the Commons, that it should be done by Indenture, that the same or like Deceit should never be put upon the Kingdom afterwards, and one Part was to be kept below. This continued for about four Years, when there was another Complaint of the Proceeding of Sheriffs, (he said he need not mention the Regulation of forty Shillings a Year, and some other Things which are not directly to this Case) and upon that there was a Penalty put upon the Sheriffs of

a hundred Pounds, which he took to be in the eleventh Year; and it was put under the Inquiry of Judges of Assize, and so it stood all that King's Reign, 'till H. V. And then there was another Law made for Electors and Elected, that they should be all resident. Some of the Law Books give a pretty Construction of it, that tho' there was such a Law, yet the Custom of Parliament was to be the Rule. But he said, he thought it to be a better Construction, That it being then reckon'd a Service, and a hard Service, none but Residents in the Borough were compellable. Thus it continued, 'till about H. VI's Time; and then if the Sheriffs had made a wrong Return, if indicted or prosecuted at the Assizes, there was to be immediate Execution for this Hundred Pounds, without any Traverse. Upon this there was a Statute to allow the Sheriff a Traverse for this Hundred Pound, and that he should not be liable to it 'till he was legally convicted; so it stood 'till about a Year afterwards, that the Parliament thought it necessary to make another Act about 8 H. 6. and then there was great Complaint again of the ill Proceedings of Sheriffs: And the Law was enforced again, and it was declared who should be the Electors; and the Sheriff was made liable to the Penalty of a Hundred Pound, and Imprisonment without Bail or Mainprize, and it was inquirable by the Judges of Assize. Another Statute was made the 10 H. 6. which inforceth the Manner of Elections, so it stood. Then 23 H. 6. there are two Statutes, one relating to the Wages of Knights, Citizens and Burgesses, and how they should be levied; another reciting the Statute of H. V. and H. VI. and it says, That there were not sufficient Penalties on Sheriffs, who besides that sometimes they sent no Writs to Boroughs, made insufficient Returns, &c. And the Mayors and Bailiffs were guilty of the same; and therefore over and above the first Penalty of a Hundred Pounds, they laid another Penalty of a Hundred Pounds more, which was to the Plaintiff, with Costs of Suit; and this was to be tried before the Judges of Assize, and the Courts at Westminster, and at the Sessions; and the Action is to lie either for a Knight, or Burgess, or any other Person that would bring the same, but within a Time limited, three Months from the Commencement of the Parliament. Thus Elections stood in Point of Law, 'till the modern Alteration, within every Body's Memory. And he hop'd whatever Time Gentlemen took this Matter into Consideration in, they would do it as became the House of Commons, and examine all Particulars, as well as the Judgments of Law, and they would do what became a House of Commons, and that no body would see the Dignity of the House of Commons impair'd. And however Differences were between them in other Things, they would be unanimous in preserving the Rights of the Commons, and of doing it in a right and justifiable Manner: And offer'd to their Consideration, whether it would not be best to proceed in the old Method, by going into a grand Committee for the Courts of Justice to consider this Matter, and that by taking this Course, they would walk in the Steps of their Predecessors, and avoid many Inconveniencies, which were easily to be foreseen would happen, by taking another Course.

But it being moved and seconded to consider of the said Reports in a Committee of the whole

House



House, the Question was put, and carry'd, That the House on *Tuesday* then next following, would resolve itself into a Committee of the whole House, to consider of the said Reports.

Ordered, That the same Members do also search the Offices of the Court of Queen's-Bench, what Proceedings were there in the Case of *Barnardiston* and *Soame*, and for a Copy of the Record of the Judgment in that Case, and report the same to the House.

*Lune 24 Januarii, 1703.*

Mr. *Brewer* reported, That the Members appointed to search the Offices of the Court of Queen's-Bench, as to what Proceedings were there in the Case of *Barnardiston* and *Soame*, and for a Copy of the Judgment in that Case, had searched the same accordingly; and he presented to the House a Copy of the said Judgment, the Consideration whereof was referred to the Committee of the whole House, who were appointed to consider of the Report relating to the Case of *Ashby* and *White*.

*Martis 25 Januarii, 1703.*

This Day the House resolved into a Committee of the whole House to take into Consideration the Report of the Lords Journals touching their Lordships Proceedings on a Writ of Error in the Case between *Ashby* and *White*, & *al.* and also touching their Lordships Proceedings in the Matter mention'd in the Petition of Mr. *Bathurst*; in which last Case of Mr. *Bathurst*, as it was alleged, their Lordships had taken upon them an original Jurisdiction in controuling an Order made by the Court of Exchequer for the filing of a Record that had been several Years lodged in Mr. *Granges's* Chamber of the *Temple*. But the Committee in the first Place agreed to go on with the Business of *Ashby* and *White*; and the Debate of that Matter was carried on with great Order and Temper, and was to the Effect following.

Mr. *Freeman* in the Chair.

Mr. *Brewer*. Sir, we are now in a Committee of the whole House upon the Consideration of the Case of *Ashby* and *White*, which I take to be a Matter of the last Consequence to the Privileges of the House of Commons, which I think are dangerously invaded by the Lords Pretence of Judicature upon them. But as I don't doubt every Gentleman here thinks it his Duty to support and maintain the just Rights and Privileges of this House, as intrusted by those who sent us hither; so we shall do it in such a Manner as will consist with, and maintain a due Correspondence with the Lords. I shall open the true State of the Case, with the Judgment given upon it in *Westminster-Hall*, and some of the Reasons which, in my Opinion, support that Judgment; and then speak to the Reversal of it by the Lords, (which, with Submission, I take to be a new Attempt of their Lordships to bring this, and all our Privileges before them in Judgment) which, I believe, neither this, nor any other House of Commons will endure, nor want Will or Power to relieve themselves against such an Usurpation.

The Plaintiff declares against the Defendants, That whereas on the 26th Day of *December*, in the 12th Year of King *William* the Third, a Writ issued to the Sheriff of *Bucks*, commanding him to cause to be elected Two Burgesses for *Aylesbury*; the Sheriff directed his Precept ac-

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cordingly to the Constables, to whom it belong'd to execute that Precept; and the Burgesses being assembled, and the Plaintiff duly qualified to give his Vote, he offered to give it for Sir *Tho. Lee* and Mr. *Mayne*; but the Defendants falsely and maliciously intending to defeat him of that Privilege, did refuse to receive it, which he lays to his Damage, and Issue being joined, that Cause was tried at the Assizes, and a Verdict for the Plaintiff, and 5*l.* Damages.

The Fact being thus tried, the Matter in Hand (that is to say, Whether this Action is maintainable by the Rules of Law, or not) was often argued by Council learned at the Bar, and afterwards considered by the Judges in the Queen's-Bench, and upon their mature Consideration, Judgment was given for the Defendants, that is, that the Plaintiff had no good Cause of Action.

Now I understand the chief Reason was, for that the Right of Voting in such Cases hath ever been, and ought to be cognizable and determinable by the House of Commons, and not elsewhere: For by the Law and Usage of Parliament, the House of Commons have heard and determined the Right of their own Elections, and consequently and necessarily the Right of the Electors to vote; and for this Purpose, at the opening of all Parliaments a Committee of Elections is nominated of Members of our own, to hear and determine of such Right of Elections, to whom Petitions (after presented to the House) are referr'd; and if any Elector had been refus'd his Vote in the Country, he is, notwithstanding, allowed his Vote here, in case he had Right, and it shall avail the Candidate as much as if the Vote had been received below; and the Committee, after Judgment upon the Case, report to the House all the special Matter, and their Resolutions; where the whole Matter may be afresh debated, and the House agree, or disagree, with the Committee, as shall appear reasonable; so that this Determination and Method of Trial hath two Digestions, and more likely to be well founded than that of a common Jury, who we know are made by under Sheriffs, and often of Persons so corrupted or ignorant, that new Trials are often granted by the Judges. But it may be objected, that no single Petitioner will be received by the House: In Answer to this, I say he may; and I have known Petitions touching Elections preferred by a very few Persons, and by the same Reason may by one: I am sure we have no Order of the House against it; and if Gentlemen object that no single Petition of this Nature was ever received, if they'll shew me when it were offered, I will shew them when 'twas received; I believe they can't shew me 'twas ever refused. But I would ask if they can shew me that such an Action as this was ever brought against the Officer, as in this Case. I'm sure they can't, and which, in our Law, is allowed a good Argument, that no Action lies; especially it being a Case which can't be presumed, but may happen very often, almost in every Election: And, I believe, there never was a new Parliament called, but frequent Occasions might have been taken for such an Action, and better founded than this of the Plaintiff's, who was a poor Hostler, and removed from that Parish, by the Order of two Justices, as being likely to become chargeable. But it seems our Ancestors repos'd a Confidence in their Representatives to have Right done them in such Cases: They sought not Relief from

B b

common



Common Juries. And what is now done by this Attempt? Why the Judges upon their Oaths say, that they have no Cognizance of the Cause; but notwithstanding, the Lords say they have Cognizance, and reverse that Judgment; and the Consequence of that is, the Lords will judge of this our undoubted Privilege, never, 'till now, drawn into Question; and by the same Reason and Law, the Lords may sit in Judgment upon all other our Privileges, and thereby we become depending upon them; which some without Doors, I find, are willing to submit to, for that they say, where one is deprived of his Right, he ought to have Damages, which the House of Commons can't give. I allow, where one is injured, he shall have Relief by our Law, in one Place or other, but we have not one Shop to cure all Distempers. The Queen's-Bench relieves chiefly in Matters Criminal; the Common Pleas in Civil Pleas between Party and Party; the Exchequer, in Matters of Revenue; Chancery, in Cases of Fraud; and in the Case in Question, Relief may be had (as said before) in the House of Commons by Law and Usage of Parliament, which all Lawyers know is a very considerable, known, and approved Part of the Laws of *England*. And tho' no Damages are usually given here, yet the Officer, for Misbehaviour, and arbitrarily refusing Votes who had Right, may be, and has been punished by the Power and Authority of the House, and even at Common Law, as when an Alderman is refused by the Mayor, or other Person who ought to admit him, the Remedy is by *Mandamus*, which tho' it is charge-

able to the Person injured, yet I don't know any Damages are given him, otherwise than that the Party injured is admitted, which is a Relief, the Alderman having what he complained for: And so the Elector, his Vote is allowed as good as if the Constable had took it. And by the way, give me Leave to observe how small a Relief the new devised Remedy by Damages is: I dare affirm and demonstrate, that the Plaintiff in the Case in question is above 100*l.* out of Pocket more than the Costs and Damages recovered, which I take to be *infelix victoria*. But if Gentlemen say, the poor Hostler could not expend so much, I believe so too; but if at the Expence of any great Man, I think it is less justifiable, to make a Tool of that poor Fellow, perhaps in order to enlarge a Jurisdiction.

I must confess I take the Case of the Elector, to be much stronger than the Case of the Electors; and yet, in such Cases, Relief at Common Law was always denied, as in the Case of Sir Samuel Barnardiston and Soame, there the Sheriff made a double Return; and in the Case of Mr. Onslow, \* a false Return; and the Persons injured by those Returns were put to very great Charges, and kept long from their Seats in the House, and yet at Common Law could never obtain a Relief. The Judges were of Opinion (as they now are in the Case of the Elector) that it was a Matter of Parliamentary Cognizance, of which they were not competent Judges. And should we now admit this Matter to be determined by the Courts below, what great Confusion and Inconvenience would follow? I presume

no

\* The CASE of DENZIL ONSLOW, Esq; was tried at the Assizes holden for *Surry* on *Wednesday* the 20th Day of *July*, in the Year of our Lord 1681, at *Kingston upon Thames*, before the Lord Chief Justice of *England*, Sir *Francis Pemberton*.

#### THE DECLARATION.

*Denzil Onslow*, Esq; had brought his Action on his Case in the Court of Common Pleas, against *William Rapley*, late Bailiff of the Borough of *Hafelmere*; thereby setting forth, That *Hafelmere* was an ancient Borough that used to send Burgesses to Parliament: That a Writ issued to the Sheriff of *Surry*, to cause Knights and Burgesses to be chosen for the Parliament to be held the 17th Day of *October*, Anno 31 *Caroli Regis*. The Sheriff made a Precept to the Borough of *Hafelmere*, to chuse Burgesses. That August 31, Anno 31 *Caroli secundi*, the Plaintiff was duly elected one of the Burgesses, and returned by Indenture with Sir *William Moore*. That the Defendant intending to deprive the Plaintiff of the Honour and Benefit of his Election, did by another Indenture return Sir *William Moore*, Bart. and *James Gresham*, Esq; as duly elected, whereas the said *Gresham* was not duly elected; whereby the Plaintiff was hinder'd from sitting in Parliament, and put to great Charge to assert his Right, to his Damage of 200*l.* After Not Guilty pleaded, upon Evidence given on both Sides at the Trial, the Case appear'd to be thus.

#### THE CASE and EVIDENCE.

At the Election in this Borough for the last Parliament at *Westminster*, there were Four Competitors, viz. Sir *William Moore*, the Plaintiff, Mr. *Dorington*, and Mr. *Gresham*. The Electors meeting and voting, the Poll was demanded, granted, and taken: The Defendant took Time to peruse and consider the Poll, until the Afternoon; and having consider'd of it, came again to the Place of Election, and declared the Plaintiff and Sir *William Moore* had the Majority of the ancient and lawful Burgesses, and proclaimed them Two to be duly elected, and seal'd an Indenture thereof accordingly; and Mr. *Gresham* being then present, opposed not the same, but desired that Sir *William Moore* (with regard to his Title and Quality) might be first named in the Indenture, although (as was then admitted) Mr. *Onslow* had the Majority of him; which was done accordingly, Mr. *Onslow* readily and generously consenting to the doing thereof.

That about a Week or a Fortnight after, the Bailiff was prevailed with to seal and return another Indenture, whereby Sir *William Moore* and Mr. *Gresham* were return'd as elected. Whereupon, Mr. *Onslow's* Right to sit was controverted, and he suspended from sitting; and was put to his Petition to the House of Commons, who upon hearing of the whole Matter, and Consideration had of the indirect Dealing of the Defendant and others, declared Mr. *Onslow* duly elected, and committed the Defendant. And Mr. *Onslow* sat in the last Parliament at *Westminster* for that Borough, and that Mr. *Onslow* had been at great Charges to clear his Election.

First, The Defendant's Council insisted on the Statute of 1 *H. 5. cap. 1.* That a Person elected must be free, resident, and dwelling within the Borough. To which it was answer'd, and resolved by the Court, That little or no Regard was to be had to that ancient Statute, so far as the common Practice of the Kingdom had been ever since to the contrary; and it was the Way to fill the Parliament-House with Men below the Employment: And the Objection was disallow'd.

Secondly, It was agreed unto by the Parties and their Council on both Sides, That the Right of Choice of Burgesses for this Borough to Parliament, lay in the Burgage Freeholders, resident, and inhabiting within the Borough, and none others.

Then the Plaintiff's Council insisted and proved, That there voted for him Thirteen, having good and unquestionable Votes; unto one whereof the Defendant's Council excepted, for that he before the Election had mortgaged his Estate: Which the Party himself, present in Court, denied upon Oath; and the Court was of Opinion, it had not been a good Objection, if true, so long as the Mortgagor continued the Possession, and had the Benefit of Redemption in him.

The Defendant's Council said, There voted for Mr. *Gresham* Fourteen, having good Votes; which if so, would have made a Majority; but the Plaintiff's Council excepted to Six of the Fourteen, as being no good Electors, for that one of them lived not within the Borough; which was proved by ancient Reputation and Perambulation, That the House where he lived was left without the Bounds. As to the other Five, the Objection was, they were no real Burgage Tenants; and that if any Conveyances had been made to them of Burgage Lands, they were lately made, and fraudulently contrived, to make Votes against an Election: And because the Defendant's Council could not deny but these Conveyances were lately made, the Court put the Defendant to produce and prove them, which was done; and upon reading of them, it appear'd Two of the Five were made after the Test of the Parliament Writ, and Three of them, in order to carry on Sir *Philip Floyd's* Election in the Borough about Five Years since.

Two



no body will pretend to exclude the Jurisdiction of the House of Commons in this Case; and yet if they judge one way, and the Courts below another, and neither have Power to supersede or reverse the Determination of the other, under what Uncertainty will the Officers and all Parties concern'd lie? Whereas, in other Cases, where one Court errs, a superior Court reverses; but here both Adjudications shall stand together, tho' inconsistent the one with the other.

But 'tis said in this Case, the Action lies, because the Defendant refused the Plaintiff's Vote *malitiose & falso*: I take those to become Words of Course, and no Evidence of that is given to the Jury.

Sir, To conclude, the House lately pass'd a Resolution, That no Lords should intermeddle at any of our Elections: But if this is allow'd as Law, they may at the last judge and make (for ought I know) all our Elections. But for my Part, I am for continuing the Possession of this, and all other just Privileges, as derived down to us from our Predecessors, who ever enjoyed and exercised them as now we should; and I hope before we rise we shall think of some Remedies, and not lie wholly under the Power, or Mercy of the Lords.

Sir *Tho. Powys*. Mr. *Freeman*, I believe I should hardly have rose up in this Matter, but that I think it more particularly my Duty to speak to this Thing, if it were possible, than any other; for in truth I have had a more particular Opportunity of knowing the Nature of this Case, and the Proceedings in it, and what the Consequences of it will be, than many others have had.

I must acquaint you I was of Council in this Cause in the House of Peers upon the Writ of Error with *White*, and the other Constables that were prosecuted in this Action, and did to my Power defend what I took to be the Rights and Privileges of this House.

I would stand right in the Opinion of every Body; for what I did there for my Client in the Course of my Profession, I don't think myself obliged to maintain here; for then it was my Duty to do my best for him as his Council, but now he hath done with me, and I have done with him in this Place.

It hath been to the great Honour of some Judges in *Westminster-Hall*, who have argued in Cases below at the Bar, and have been brought on the Bench before the Cause hath been determin'd: That they

Two of them were Conveyances by one *Valler*, who had a Garden of about thirty Rods; and convey'd to each of his two Sons a Piece of it, containing about ten Rods, of which they had made Jointures to their Wives, each Share being worth at best 2 s. *per Annum*. Another of the Five was made by a Father who had a Close containing two Acres, and made a Conveyance to his Son of about a Quarter of an Acre, which always after lay undivided, and was constantly enjoy'd by the Father. Another Conveyance was made by a Son-in-law to his Father-in-law, of a Cart-house. The last was a Conveyance to one *Jackson*, of a little Tenement; but it was proved that collateral Security was given to re-convey, and that the Grantor had repair'd it. As to all Five, there appeared several Badges of Fraud, as a continued Possession in the Grantors, &c. and the several Confessions of the Purpose and Intent of making them for the Elections.

The Court censured such Proceedings as evil and unlawful: Mr. *W.* (Recorder of G.) one of the Defendant's Council, stood up to justify these Proceedings, and said it was Part of the Constitution of our Government to do so. At which the Court seem'd very angry, and wonder'd that any one, especially a Man of the Gown, should say so; and said, Do you think our Government hath no better Constitution? With which the Gentleman not being satisfied, he was told by the Court, he deserved to be taken Notice of for saying so, and that he seem'd to have advised the Thing done.

To conclude the Evidence, the Plaintiff's Council deliver'd into Court Ten or Twelve several Conveyances that were proved by the Party that wrote them, to have been made by Mr. G's Order, to make so many Votes at a former Election, wherein Mr. *Gresham* was concern'd; and the Election being over, they were cancell'd and deliver'd up, concerning which, Mr. *Gresham* endeavour'd to say something by way of Excuse, but was told by the Court, it was too bad to be excus'd; and it was well an Act of general Pardon had pass'd since this was done, else he should have answer'd it in another Place. During the whole Time of the Trial, the same was managed with great Patience and Circumspection; for so soon as the Cause was open'd by the Plaintiff's Council, the Court perceiving the Nature of it, commanded Silence, and Attention in the Jury: The Court declaring it was of great Weight, as great as any that ever came there to be tried. And the Evidence being fully given on both Sides, the Court by way of Direction told the Jury, that the Plaintiff need not, as this Case is, prove any express Malice in the Defendant; for it shall be intended when a Man shall do such an evil Thing as this is, contrary to his own Knowledge, and Declaration made upon the Election, and afterwards also; (for it was proved against him, by one or two Witnesses, that a little Time before this Trial, he did confess Mr. *Onslow* was duly elected, and that he had told Mr. *Gresham* what would come of it.) And the Court further told the Jury, that this was a Cause of Moment, and deserved more than ordinary Consideration; and the making Votes by such Means, was a very evil and unlawful Thing, and tended to the Destruction of the Government, and debauching of Parliaments: And although some of the Conveyances were made some Time before his Election, to serve a Turn at a former Choice; yet that they were fraudulent, and void in their Creation, and ought not to be made use of at any Time against any other Person; and that it was senseless to think such Practices were Part of the Constitution of our Government, or to imagine that Persons whom we entrust with our Lives and Fortunes ought to be made and chosen by such evil Devices; and that such Practices deserve to be severely punished, and directed the Jury to give signal Damages: Whereupon the Jury withdrew, and after a short Stay gave a Verdict for the Plaintiff, and 50 l. Damages.

And the Court in the Course of Evidence having observed one *Billinghurst* to be much concern'd in the Proof and Management of their fraudulent Deeds, conceived him to be privy to much of the Practice thereabouts, and commanded him to stay in Court until the Jury had given in their Verdict; which when they had done, the Court required him to find Sureties to appear in the Court of King's-Bench next *Michaelmas* Term, to answer to an Information touching the said Misdemeanor; and in the mean time to be of good Behaviour, which accordingly he did do; and Sir *William Moore*, and Sir *George Woodruff* (whom he had served in the last Election at *Hafslmere*) were his Sureties. And the Court required the Plaintiff, Mr. *Onslow*, to see that an Information be prefer'd; which he promised to do: And the Court declared it was a very great Offence, and should be severely punish'd.

I shall give a few Instances of what the House of Commons have done in former Ages to punish and prevent Evils about Elections.

1. Anno 20 *Jacobi*, Doctor *Harris*, Minister of *Blechingly* in *Surry*, for misbehaving himself by preaching, and otherwise, about Election of Members of Parliament, upon Complaint, was call'd to the Bar of the House of Commons, and there as a Delinquent on his Knees, had Judgment to confess his Fault there, and in the County, in the Pulpit of his Parish Church, on Sunday before the Sermon.

2. Anno 21 *Jacobi*, *Ingrej*, Under-Sheriff of *Cambridgeshire*, for refusing the Poll, upon the Promise of Sir *Thomas Steward* to defend him therein, kneeling at the Bar, received his Judgment, to stand committed to the Serjeant at Arms, and to make Submission at the Bar, and acknowledge his Offence there, and to make a farther Submission openly at the Quarter Sessions, and there also to acknowledge his Fault.

3. Anno 20 *Jacobi*, the Mayor of *Arundel*, for misbehaving himself in an Election, by putting the Town to a great deal of Charge, not giving a due and general Warning, but packing a Number of Electors, was sent for by Warrant, and after ordered to pay all the Charge; and the House appointed certain Persons to adjust the Charges.

4. And lastly, 3 *Car.* 1. Sir *William Wrey*, and others, Deputy-Lieutenants of *Cornwall*, for assuming to themselves a Power to make whom they pleas'd Knights, and defaming those Gentlemen that then stood to be chosen, sending up and down the Country Letters for the Trained Bands to appear at the Day of the Election, and menacing the Country under the Title of his Majesty's Pleasure; had Judgment given upon them, to be committed to the Tower. 2. To make a Recognition of their Offence at the Bar of the House upon their Knees; which was done. 3. To make a Recognition and Submission at the Assizes in *Cornwall*, in a Form drawn by a Committee. See this Case in a Folio Pamphlet, printed 1681.

have



have argued at the Bar one Way, and when upon the Bench, have given Judgment another Way against their very Clients, and thereby done their Duty in both Places.

Now, when I have said this, I hope I do stand fair and clear, that I now speak as a Member of the House of Commons.

You are upon a Point which I wish had never happened, for there is nothing I enter upon with greater Reluctancy, than what looks like a Dispute with the other House; for no Man pays a greater Honour to the House of Peers, and to every Peer there, than I do; however, as I am intrusted, I shall endeavour to maintain the Rights of this House. And I do say, if the Peers of England can determine all our Properties at Law upon Writs of Error, and all our Rights in Equity upon Appeals; and if they can determine all our Elections in Consequence of this Action, (as I am of Opinion they may, if this Action prevails,) they have a greater Power than ever that House had in the Days of their Noble Ancestors, when they were in their greatest Grandeur.

I will show you what will be the ill Consequences, and I think it very fit for you to take this Matter into Consideration, if there be any way to come at it. First, I can't deny, but generally speaking, a Man has Right to bring his Action at Law; but then I hope, tho' a Man hath a Right to bring an Action, yet he can't bring it in Detriment to any other Man's Privilege; for if a Member of this House be sued in Time of Privilege, tho' a Person have a Right to such Action, yet he can't prosecute it in Breach of the Privilege of such Person, much less can a Man prosecute an Action in Breach of the Privilege of this House. And suppose this should come before the Lords in Question by Writ of Error, and they should be in Possession of the Cause; sure every Determination of the Lords upon a Writ of Error, is not without more ado to be conclusive to the Commons in their Rights and Privileges, so as that they may not take an Alarm, and be concerned if all their Privileges are about to be taken from them. Suppose any Member of this House, (as I think by the Privileges of this House, he may,) should in this House have just Occasion to take Notice of some great Misdemeanor in any great Officer of the Crown, and should assert Matters highly intrenching on the Honour of a Peer of England; and suppose when the Parliament was up, the Peer should bring his Action of *Scandalum Magnatum* against the Member at Law for Words that he had spoken here, and lay them as spoken elsewhere, (for so in a transitory Action he may,) and he should justify that they were spoken in the House of Commons, where, by the Privileges of the House, Freedom of Speech is allowed; and suppose Judgment in that Case, (as in this it was,) should be given against the Plaintiff, and afterwards this by a Writ of Error should be brought before the Peers, and they should reverse this Judgment, and give Judgment for the Plaintiff; Can any thing be more destructive to the Constitution of Parliament, if such a Case as this should happen? And must the Commons in such Case sit down by it?

Suppose any Man should presume to arrest any Member as he was going into the House of Commons, nay, the Speaker himself, and afterwards he is committed by Order of the House, and the

Person committed should bring his Action for taking him into Custody, and the Serjeant who took him into Custody should plead this Matter; and the Judges give Judgment for him as they did for the Defendants in this Case; and by Writ of Error, it being brought into the House of Peers, they should reverse this Judgment, and give the Plaintiff his Damages; Will any one say, we could not take Notice of this? Would it not destroy all our Rights and Privileges?

So no doubt in this Case, tho' they have gone by way of Action at Law; and Judgment in *Westminster-Hall*; and Writ of Error in the House of Peers, it cannot be said, but if it concerns our Rights, we may take Notice of it. In the Case of *Sir John Elliot, &c.* (Vol. VII. page 242.) the Commons declared the Judgment, 5 Car. 1. illegal, and against the Privileges of Parliament.

It is my poor Opinion 'tis our Right, (and I think no body can doubt it,) for we are in Possession of it, to determine our own Elections; and I would be glad to be acquainted when first we began to hear and determine our own Elections; I believe no body will say with Certainty when we did not.

I know we have a turbulent Author, who generally affected to be in the Wrong, and tho' a Member of this House, made it his Business to write against their Privileges, and was always hunting among the Records of the Tower, from whence he brought away a great deal of Dirt with him, and yet could never pretend, or produce more than two Instances, where the Commons resorted to any other Place for the settling the Right of their Elections: The Man I mean, is Mr. Prynne; he takes occasion to do it from what is said by my Lord Chief Justice Coke, (who, with your Favour, I must take Notice of so far, as to say he was not only a very great Man in our Profession, but had been Speaker of the House of Commons in his Time,) and he, in his 1 *Inst.* fol. 116. and 4 *Inst.* 1 cap. fol. 14, 15, and 23. asserts, That the Law of Parliament is as much Part of the Law of the Kingdom, as any other, and indeed the highest: He calls it *Lex & Consuetudo Parliamenti*, and says, This is a Law that each House hath Possession of, and judgeth by, and each House is a House of Judicature; and he puts upon this a great many Instances, and some of them may seem strange to those who have run upon the Commons of late. He tells you of a Case, 8 *Eliz.* at that Time Onslow was Speaker, (and it is in fol. 19. of the Book of the House of Commons of that Year,) one Long was returned a Member for *Westbury*; and it being complained of that he came into the House by undue Practices, it was enquired into by the House of Commons, and found that he had given four Pounds to the Mayor of *Westbury*; and they having examined and try'd this Matter, they did not only expel Long, but they fined and imprisoned the Mayor of *Westbury*, *secundum Legem & Consuetudinem Parliamenti*. Mr. Prynne, the Author I mentioned, supposeth there was a Time when the Commons used to apply to the King, in case Wrong was done in the Matter of their Elections; and in his Comment on the 4 *Inst.* 31. goes back to 12 E. 2. There the King was pleased by Commission to appoint several Persons to hear the Matter of an Election. He pretends to another Instance, and that is in *Henry the VIII's* Time, in the Case of *Huntington*; and there was a Petition to, and a Commission



sion from the King in like manner. The latest of these Instances is above two Hundred Years ago, and neither of them make any thing for a Power in the Lords to determine the Elections of the Commons; but on the contrary, rather for a Power to be delegated by the King; and the Instances are but Two.

Now, I say, Sir, we are, and have been in Possession of this Right for a very great Length of Time; and have it confirm'd to us by Act of Parliament; for the late Act of 7 and 8 of King William, hath in Effect declar'd, that the Determination of the Right of the Electors is in the House of Commons; for it says, That the Sheriffs and Officers of all Sorts, shall follow the last Determination of the House of Commons; as their Rule and Guide in such Cases. And surely nothing is more absurd; than to say, that this House shall examine, try, and determine who are Elect'd; and yet *Westminster-Hall*, and the Lords shall examine and determine the Right of the Electors: How can any one examine the Election, but the first Step he takes must be to consider and determine who are the Electors? And the determining the one, is determining the other.

I would trouble you a little with the Reasons they give why this Action should lie. It hath been said; and I think 'tis true for the Honour of England, and I believe it hardly can be found to fail, That where a Man hath a Right, and a Wrong done him; he's somewhere to have a Remedy; but now let us see the Application of this Rule. Are they not by the same Law that settles the Right; and declares the Wrong, to enquire where the Remedy is to be had? For tho' you have a Remedy; you mistake that which is the proper Remedy; and the same Law that settles the Right; and declares the Wrong, gives the Remedy; you must therefore go to the Place where the Law directs your Remedy; not where your self would desire the Remedy. Therefore, says my Lord Coke, in his Preface to his 4 *Instit.* and likewise *fol.* 14 and 15. We have several Jurisdictions, some Ecclesiastical, some Temporal, &c. some govern'd by one Law, and some by another; and all must have their Rules and Bounds, which must be observ'd. If your Right be Ecclesiastical, as for Instance, before the Statute of Tithes, could you in *Westminster-Hall* have brought your Action? Or if Issue had been join'd in such an Action, and the Parties had gone to Trial, will any Body say but that the Judges must have arrested Judgment, and said that 'twas out of their Jurisdiction? If a Lord of a Manor should refuse to admit a Man; to whom a Surrender is made of a Copyhold Estate, the Lord has done him Wrong, and Damage too; but yet he can't bring his Action at Law for it, for it is an equitable Right; and he must go to a Court of Equity for his Remedy; and so I could put a thousand Instances, but I will not spend your Time. So that I say, 'tis not enough to say you have a Right, and must have a Remedy, and therefore you may bring your Action at the Common Law; but you must seek it in a proper Place, though perhaps Costs and Damages, and a Trial by a Jury, may be more desirable by the Party.

Now, in this Case I would know, Whether this is not a Matter of Parliamentary Jurisdiction, and also a Parliamentary Right? Is any

Thing more plain? He that hath a Right to Vote, hath a Right to send a Person to represent him, and Sit in Parliament; therefore 'tis a Parliamentary Right: Where then must be your Remedy? In the House of Commons; where you have a Right to send a Person to Sit and represent you; there you may complain, I was deny'd my Vote, or misus'd upon the Election. This, by the Law of Parliament, shall be examin'd here; and for this Purpose you constantly appoint a Standing Committee of Elections.

Indeed I can't but wonder at the bringing of this new-invented Action; for if there be any thing certain in the Common Law, 'tis this, That where you claim a Right to any thing, it must be founded upon common Usage in that Case; or in some Case that carries the same Reason, and is just like it; for the Common Law, generally speaking, is nothing else but Common Usage. Now let us see for the Usage in this Case, and whether there has been any thing like this Action before. Say they, how do you know but such Actions have been brought before? I do not see that there can be a stronger Negative Proof in any other Case than in this; for we have had Parliaments, as appears by our Statutes in Print, for five hundred Years; and we have had Parliaments in every Reign since, and in several Reigns a great many Parliaments: And let us consider, whether this Case would not have happen'd frequently in five hundred Years, in so many Elections in Counties, Boroughs, and Cities, where there are such infinite Numbers of Electors: And therefore this Case must frequently have happen'd if such an Action lay at Law. If it be ask'd, how do I know that such an Action hath not been brought before? I answer, 'Tis wonderfully plain there never was such an Action brought before; for as we have our Acts of Parliament in Print, so we have faithful Reports of all our Law-Cases; which we call the Year-Books, and which are Memorials of all Cases so long back as from E. II's Time; that is, 400 Years; follow'd by a Series of Reports 'till this Time, and are now grown so numerous, that they become a Burden. And I will desire any Gentleman of the Law here, or in England, to shew me the Footsteps of any such Action as this, or of this Kind 'till now, ever brought before. We have always said, *Our Forefathers were Wiser Men, and greater Lawyers than we are*; and so they were: But such an Action as this never entered their Thoughts.

But it may be said, How does it appear that there was Occasion for these Kind of Actions formerly, for Men heretofore were unwilling to serve in Parliament, they were hir'd, and almost pressed to it, and it was hard to get Men to come up? I answer, It was so far otherwise for many Years past, that so early as H. IV's Time, there were great Contests about Elections, and the Sheriffs in those Days were apt to do Wrong, as appears by 7 H. 4. cap. 15. And therefore 11 H. 4. cap. 1. there was impos'd One Hundred Pounds Penalty to the King; on the Sheriff that did not do his Duty, according as the Statute does direct: So that it does appear there was Occasion for these Actions, if they had lain by Law; and yet you will find that never, till 23 H. 6. did it enter into the Thoughts of any Man, that an Action at Common Law could be brought for an Injury in an Election; and there-



fore that Act recites, that there was not before that Time, a sufficient Remedy for the Party griev'd, and therefore gives a Hundred Pounds to the Party, and Costs if a Knight, and Forty Pounds if a Citizen or Burgefs, and that by a Law made on purpose to help the Party to an Action where there was no fuch Remedy before. Thus it refted till the famous Cafe between *Nevill* and *Strode*, in 2 *Siderfin*, fol. 168. (in that Time they fent five Knights of the Shire out of *Berkshire*.) Mr. *Nevill* brought his Action againft *Strode* the Sheriff; and he alledg'd, that he being One of the Five chofen for that County, *Strode* had maliciously and falſely refus'd to return him, &c. and the Jury gave him fifteen hundred Pounds Damages. This Action made a great Noiſe, and the Judges look'd upon it as a great Novelty, and thought fit to confult the Parliament in it; \* (in former Days in Matters relating to the Parliament, they uſed to confult the Parliament,) and the Judges heretofore when they were ask'd their Opinion in difficult Matters relating to the Parliament, or Law of Parliament, would ſay this was above us, and therefore to be decided by Parliament. And this Cafe being referr'd to the Parliament, they look'd upon it as ſo extraordinary an Attempt, that tho' Mr. *Nevill* had a Verdict for fifteen hundred Pound Damages, yet he never got a Farthing of the Money, or any Benefit by the Verdict: *Sed ibi dormivit.*

After this, came the great Cauſe that hath been mentioned of *Soame* and *Barnardiſton*; and methinks this deſerves very much our Conſideration, and how far the Determination of the Houſe of Peers ought to be a Rule in this very Cafe. That Cauſe ſet forth with great Proſpect of Succeſs: Sir *Samuel Barnardiſton* in that Cafe, did not ſlight the Determination of the Houſe of Commons, but firſt petition'd this Houſe as the proper Place to determine his Right, and had it decided for him, That he was the Perſon duly elected, and the other Return was taken off the File; and then he brought his Action at Common Law, and ſet forth this whole Matter, and that the Sheriff falſely and maliciously return'd another with him, whereby he was kept out of his Right, &c. a long Time, and put to very great Expence and Coſts. This came to be try'd at the Bar of the *King's-Bench*, and there was a Verdict given for Sir *Samuel Barnardiſton* for eight hundred Pounds. This was look'd upon as a great Cafe, and my Lord Chief Juſtice *Hale* bid all Perſons about him take Notice, that they did not determine the Right of the Election, for the Judgment in that Cafe belong'd to the Parliament; but ſaid, ſince the Houſe of Commons had determin'd the Right, he thought they might follow their Judgment to repair him in Damages, and ſo gave Judgment for the Damages the Jury had given the Plaintiff.

This Cafe was look'd upon ſo improper for the Common Law, that upon a Writ of Error brought in the Exchequer Chamber, that Judgment was revers'd; becauſe the Common Law could not any way intermeddle with Elections to Parliament, further than was directed by Acts of Parliament. It might have been ſaid, and I know 'twas ſaid, that the Reverſal of this Judgment was by an extraordinary high Hand: And therefore, upon the Revolution, in the very Beginning of King *William's* Reign, Sir *Samuel Barnardiſton* brought a Writ of Error in Parliament, complaining, that in the Exchequer Chamber they had revers'd this Judgment unjuſtly, and went upon theſe Reaſons, as may be obſerv'd from the Journal of the Houſe of Lords, which were the Reaſons of ſome very few proteſting Lords:

*First*, Becauſe it was a denying Sir *Samuel Barnardiſton* the Benefit of the Law, which gives Relief as to all Wrongs and Injuries; and here is a very great Damage to the Plaintiff, and therefore he ought to be repair'd.

*Secondly*, Say they, if it ſhould be allow'd that Sheriffs and Bailiffs may make falſe Returns, and no Remedy but a Hundred Pounds Forfeiture, it would be of dangerous Conſequence; and might tend to the packing of a Houſe of Commons, which may overturn the whole Conſtitution. But the Peers then did not think theſe Reaſons ſufficient for this new Action at Common Law, and accordingly the Houſe of Peers affirm'd the Judgment of Reverſal in the Exchequer Chamber, and ſaid, the Judgment was well revers'd; for that no ſuch Action did lie at the Common Law, though the Injury done did tend to the Plaintiff's Damage; and all the other Miſchiefs which are now ſuggeſted, were inſiſted on; and thus it ſtands to this Day. And yet now 'tis ſaid upon the ſame Reaſons, the Action does lie for this Perſon, tho' he be only an Elector, and muſt receive much leſs Damage than the Perſon elected; and there is no one Reaſon for the Elector, but holds more ſtrongly for the Elected. The Elected can't maintain an Action, and yet now 'tis clear that one of the Electors may, tho' he can have no ſubſtantial Damage; for if a Man comes and gives his Vote, (as here in this Cafe,) 'tis not in the Power of the Officer to hinder him of the Benefit of it; for his Vote will be as well given, as if the Officer had put it down, and this with reſpect both to the Perſon who gave the Vote, and him for whom he voted; and ſo really 'tis no ſubſtantial Damage to any Man.

The next Thing I ſhall mention to you, is another Cafe of Mr. *Onflow*: He brought his Action againſt the Sheriff of *Surry* for making ſuch a Return upon him, (I believe I have the Gentleman in my Eye who brought that Action,) he declar'd in the ſame Manner that it was done falſely and maliciously, and had a Trial and a

\* Sir *Humphry Mackworth*, in his *Vindication of the Fundamental Right of the Commons of England*, Page 27, ſaith, In the Cafe of *Strode* and *Nevill*, An. 1655, in an Action on the Cafe, againſt the Sheriff for a falſe Return, to the Damage of 2000 l. after Verdict for the Plaintiff, and 1500 l. Damages, the Court of *King's-Bench* adjourn'd the Cafe into Parliament, *propter difficultatem*, Whether the Action did lie or not? Where it is to be obſerv'd, that it was not adjourn'd into the Houſe of Peers, but into the Houſe of Commons, as the only proper Judges, in all Cafes of that Nature concerning Elections: So careful were they of the Rights of the Commons.

And let not the Iniquity of thoſe Times of Rebellion be objected to this Inſtance; the Argument from thence extremely confirms the Right of the Commons; for if it be conſidered that *Cromwell* had then created a new Houſe of Lords, and wanted nothing but a Houſe of Commons to eſtabliſh his Uſurpation; that to this Purpoſe he had form'd a New Model of an Houſe of Commons, and overturn'd the Method of Elections, depriving all the Boroughs of their Rights, and cauſing the Choice and Returns of Members to be made by the County; yet the Name of a Houſe of Commons remained; and even that was ſo revered in thoſe Days, that none would attempt to deprive them of their eſſential Privilege, of judging of Elections: No Influence could biaſs the Judges; they thought it ſo inherent, that they would not preſume to intermeddle in it.



Verdict; and yet notwithstanding, the Court of *Common Pleas*, (being govern'd by Sir *Samuel Barnardiston's* Case,) did unanimously, 33 *Car. 2.* say, We must not presume to determine the Merits of Elections, or Returns, there is a proper Jurisdiction for it, and they gave Judgment against the Action, and I think he hath acquiesced in it ever since. I am sure I have heard no more of it; the Reasons given by the Court, appear in the Report of the Case in 3 *Levinz*, fol. 29 and 30. and are worth the reading.

There was a Case a Year ago between *Prideaux* and *Morris*, in the County of *Cornwal*. Mr. *Stratford* was return'd, and Mr. *Prideaux* brought an Action in the *Common Pleas*, in the Time of King *William*, against the Viander, for making a false Return against him to his great Damage, and laid it with all Aggravation. This went to a Trial in *Cornwal*, and there was a special Verdict found; and the Question was, Whether this Action would lie before the Commons had determin'd the Right of Election? And the whole Court unanimously gave Judgment, that the Action could not be brought till the Matter had been first brought before the House of Commons, and they had determin'd the Right.

Now here is a total Silence in all Books of the Law, that any such Action as this is doth lie: Here are the Acts of *H. 6.* and King *William*, which provide Remedies at Law, because there was no other Provision before. Here are not only these solemn Judgments in *Westminster-Hall*, but the Judgment of the House of Peers, in the Case most like to this of any that can be thought of, that no such Action doth lie: And yet I can't tell how, there are abroad Persons that endeavour to run upon the House of Commons, and use them ill on all Occasions, and are zealous for this Cause, which seems to be set on foot to undermine all our Elections, and bring them to another Judicature.

Now see the Consequence: No Man ought to have a-foot against him, two Judgments at once in two several Courts, whereby one may punish him at the same time for doing a thing, and the other for not doing it. I believe such Proceedings would be look'd upon as barbarous, even in *Turkey*, and yet that will be just our Case: A Gentleman petitions the House of Commons, and says, The Right is in such a Set, or Sort of Men; as for Example, in all the Freemen, or free Burgeffes; and that according to that way of Election he was chosen, and not the Person that is return'd; and this is determin'd by the Committee of Elections, and afterwards by this House, against him that petition'd. This Man goes immediately and brings an Action in *Westminster-Hall* against the Officer that return'd the other; nay, every one of these Persons that he affirm'd the Right of Election to be in, bring their Actions, and it comes into *Westminster-Hall* to be try'd, and the Jury find the Right to be in these Men, as he has allieg'd, contrary to the Determination of the House of Commons, and Judgment is given against the Officer in every one of these Actions, for the Men you have determin'd the Right not to be in. You can't set one of these Judgments against the other; I can't defend myself in *Westminster-Hall*, by saying, The House of Commons have determin'd that these Men, who sue me, have no Right to Vote. There is nothing like this in the World, two indepen-

dent Courts can't controul one another, but both may go on together in the same Cause, and both having a Right to judge, one judges one way, and the other t'other, and the Officer is crucify'd between them.

Let it be consider'd again, that at this Rate none but Knaves, or Beggars, will be Mayors, or Bailiffs, in an Election-Year: For suppose as at *Westminster*, where I think there are Ten Thousand Electors; or suppose it be as in some Towns near *Wales*, for one of which I have the Honour to serve, where the Descendants of every Burgeffs claim a Right to Vote, and by Consequence they will bring it in Time almost to all the Sons of *Adam*; for all the Sons, and all the Daughters Husbands, and all their Descendants, claim a Right to Vote. Now, what a miserable Case must that Officer be in, when Persons shall come from East, West, North and South, and say their Pedigree is so and so, (for they are good at Pedigrees in those Countries,) yet, What a Condition is he in? He's bound to determine whether they have a Vote or not; and tho' he's no Lawyer, or Herald, yet however he's bound to give Judgment one way or another, at the Peril of an Action: And suppose but a hundred Men should bring their Actions against the Officer, what Man can stand a hundred Actions, tho' he be in the Right?

There are not only these Difficulties in the Case, but there is Revenge; and in popular Elections there are those Heats, and the Voters engage with that Animosity, that the losing Side next Day will be ready, perhaps only for Revenge, to send for a Multitude of Writs, and have the Pleasure of ruining the Officer who was against them, tho' he was in the Right; for every one has a Right to bring his Action, whose Vote was disallow'd, tho' it should be found at last that he had no Right.

As to the Words *falso & malitiose* laid in this Declaration, which seem to be a great Ingredient in this Action, I agree, in some Cases where there is a Jurisdiction, these Words may make a great Aggravation of the Offence; but they can't make a thing unlawful that is lawful, nor give a Jurisdiction where there was none before: For no Man will say, if a Person should bring an Action at Common Law for a Legacy, and alledge, That the Executor, tho' he had sufficient Assets, yet he *falso & malitiose* refus'd to pay it; that would give a Jurisdiction to the Courts of Common Law. These Words are *verba Clericorum*, Words of Course for the most part. Besides, how dangerous and hazardous it would be for an Officer, tho' ever so innocent, to depend upon these Words, when every Body knows that Falshy and Malice rest in the Mind; they are in the Imagination, and the Jury that are to try this Action, are at Liberty to judge with what Mind the Officer acted; that would be the hardest thing in the World for an Officer to undergo in every Action. It would be enough for the Jury to presume it was done maliciously, (seeing few Mayors, or Bailiffs, but have their Inclinations, and give their Votes themselves for their Friends,) because the Officer made an Interest for the other Side; and the Consequence of this new-invented Action, if countenanc'd, will be, that every Triennial Parliament will bring a Triennial Harvest to *Westminster-Hall*. I speak against my own private Interest,



terest, if that was to be consider'd. Elections, without Actions, keep up Animosities too long, so that they are hardly heal'd in three Years Time; but these Actions will help to vex and worry Corporations from three Years to three Years, and Mayors and Bailiffs will be the most miserable Men in the Kingdom, and ought to run their Country, rather than stand a popular Election; whereas the Officer is accountable to you for his Behaviour at the Election.

This is not a Matter that stands in need of the Aid and Assistance of *Westminster-Hall*, that they should invent a new Action and Remedy, as if there was a Failure of Justice. Has any one come with a Complaint against any Officer to this House, and they have not been willing to hear it? Have not the Committee a Right to hear and report Matters with respect to the Electors, as well as the Elector? And have we not known that the Electors, tho' but a small Number of them, (as in a late Case of this sorry Town of *Aylesbury*) about Five, I think, of the Electors came and complain'd, and their Complaints were fully heard. And if any single Elector should come with a Petition, and represent that he was abused by any Officer, or ill treated by any Mayor, or Bailiff at the Election, I don't think but the House would be ready to do him Justice: And they have a Right so to do, for the Officer is accountable to them for his Behaviour. 'Tis not now only so practis'd, but always was so; for in the same Treatise of my Lord *Coke's 4th Inst. fol. 49.* he says, that they will make him change his very Return; they will make him raze out the Name of one, and put in the Name of the other. So they have a Jurisdiction adequate in this Case; and surely if they can hear the Complaint of several Electors, they can hear the Complaint of any one Elector. I would not trouble you with Arguments that may be proper in *Westminster-Hall*, because we are here upon a Matter of our Constitution; but I know no Action more obnoxious to the true Reason of the Common Law, which abhors Multiplicity of Actions; and a Man shall never have a particular Action for that which naturally draws on Multiplicity of Actions, and may be reform'd in a more compendious Manner. Upon this Reason that famous Case in 5 *Rep.* call'd *Bolton's Case*, is founded: If a Man builds a Dove-house near a Common-field, where Men make all their Profit by Plowing and Tillage, and therein keeps a great Number of Pigeons that live upon his Neighbour's Corn, is not this a great Wrong and Injury to them? And yet no Action lies; for if one Man that is wrong'd thus may bring his Action, a great many more may do the like, and so there will be infinite Actions; therefore it shall be presented in the Court Leet, as that Book says. So there is that Case of *Williams* in the same Book, where the Lord of a Manor had a Chapel for himself and Tenants to repair to, and to hear Divine Service, within the Parish of *Aldbury*: He brought his Action against the Vicar, who was obliged to officiate, for that he had neglected, &c. tho' he had used Time out of Mind to officiate, and had an Allowance for it: Says the Case, If this Action should be allow'd, all the Tenants and Servants of the Lord might have the like Action, and so there would be Multiplicity of Actions, and therefore he shall not have this Action; but if it had been to have

been perform'd in his own private House or Chapel, he alone might have had an Action. But since it would draw on a great many Actions which may ruin any Man, therefore the Remedy must be taken in such Manner as it is given where there is a publick Offence. In the Case before us, every Person is chosen *pro bono publico*; for tho' he be chosen for a particular Place, he serves for the whole Kingdom; and for that Reason you shall not proceed by way of Action, but in such Manner as it hath been always us'd, where the whole Thing shall be examined at once, and all determined upon one Petition, wherein all the Parties injured may join instead of a Multitude of Actions.

I shall not propose to you any Thing, but hope you will at least come to some Determination that may assert our Right in this Point, that this Door may not be open to bring in a new Jurisdiction to examine and determine whether any of us Sit here rightfully or not.

'Tis a standing Order of the House; that no Peer hath a Vote in the Election of a Commoner; but in the next Elections, if this be allow'd, every Peer may vote, for they are Freeholders, and many of them Burgesses and Members of Corporations, and they may all come and demand your Votes, and if refused, bring their Actions.

These, and many more Inconveniencies are obvious, if this Action should be allow'd, and I believe it may have a great Effect upon our Constitution. Very much more might yet be said, but I have taken up too much Time already.

Sir *John Hawles*, (Sollicitor-General, *Temp. Will. 3.*) Mr. *Freeman*, we are jealous of our Privileges, and I think we have just Reason so to be; but we must take Care that *that* does not carry us too far out of the Way: I would not have it taken for granted, that whatsoever is said against the Lords here, tends to assert the Privileges of this House, or that what is said for the Lords here, is against this House. I am as much for the Privileges of the Commons of *England* as any Man, and I own they have lost a great deal of Power: I think the Commons had a great Power, when the greatest Part of the Judicature of this Government was their sole Right; I mean that of trying the Fact of Causes, which heretofore was in the Commons alone: Nay, if a Peer had had a Matter of Contest with another Peer, or with a Commoner, and Issue was join'd, that Issue was to be try'd by Commoners, and not by Peers. 'Tis true, if the Prosecution of a Peer was in a Capital Matter at the King's Suit, it was to be try'd part by Commoners, and part by their Peers; the Bill of Indictment was to be found by Commoners, but the Issue was to be try'd by Peers: But if a Peer was prosecuted in a Capital Matter by a Commoner, or a Peer, as by an Appeal, the Issue was to be try'd by Commoners. I must confess, as to the Lords Jurisdiction in Matters of Equity, the Commons have great Reason to be jealous, because there all Facts, as well as Law and Equity, come to be try'd and judg'd by the Lords alone.

Sir, I say, when all Facts were try'd, and most of the Officers of Government were chosen by the Freeholders of the County, the Commons were somewhat greater than now they are; when they had the Election of the Sheriffs of the Counties; when they had the Election of what they



they call'd the Conservators of the Peace, Officers that were the same with our now Justices of the Peace, with this Difference only, those the Commons made, these the Crown makes. The Commons had a great Power when they were to elect their Captains that led them out to War, which heretofore they did, and had a Right to do, 'till it was taken away from them by the Act that settles the Militia, tho' I own it was disus'd many Years before. The making of Sheriffs is now plac'd in the Crown; we have nothing left now, but Matters of Trials in particular Cases, and even that is so far cramp'd, that the Jury is return'd by an Officer that the Crown puts upon the County.

But yet I am not for carrying Things further than we have a Right to do; I am for keeping what we have, and for that Reason I am not for encroaching upon the allow'd Jurisdiction of the House of Lords; we have always allow'd them a Right to hold Plea of Writs of Error. The Parliament in *Hen. IVth's* Time, did declare the Right of Judicature to be in the House of Peers; and I never found any Inconvenience in it, if the Peers kept only to Matters of Law, and left the Facts to be try'd by the Commons; nor did I ever know that Right of the Lords questioned 'till now.

A great deal hath been said for, and against the Right of bringing this Action; I do not think that *that* is now the Question: The Question is, Whether a Judgment being given in the *King's-Bench*, a Writ of Error does not lie in the House of Lords? But whether the Lords did right in giving that Judgment they have now given in the Case before you, that is another Thing. I speak to the Right of holding Plea of this particular Writ of Error; no body hath deny'd, but that they have a Right to hold Plea of a Writ of Error in general upon a Judgment given in *Westminster-Hall*; but say they, the Lords ought not to have done it in this particular Case; and several Reasons have been given for it.

First, here is the Privilege of the House of Commons in Question in the Case: That hath been argued and insisted on, but I confess, that Argument does not influence me. The Lords have held Plea of a Writ of Error, in which the Privilege of the Commons hath been in Question; and the Lords have done Right to the Commons in it, particularly in that Matter of the Parliament of 1640, when some were supposed to have done irregular Things in the House of Commons, and were prosecuted for it by Information in the *King's-Bench*, and were fined in *King Charles I's* Time, whereupon a Writ of Error was brought in the House of Lords, and that Judgment revers'd in the Time of *King Charles II.* There the Lords did Right to the Commons in the Matter of Privileges of the Commons, for it was for laying Hands upon the Speaker in this House; and I think every body commended what was done in that Matter by the House of Lords, and no body ever said but that they had a Right so to do. Some Things are not to be come at otherwise, than by a Writ of Error in the House of Lords; and I believe, if you look a little back, there have been Judgments given in *Westminster-Hall*, not only in Matters of, but against the Privilege of the Commons; and these Judgments stand unrevers'd, tho' I think they are fit to be revers'd, and I

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know no other Method to do it but by Writ of Error in the House of Lords. I think there is one Judgment upon an Information against the Speaker for licensing Papers to be printed, which he did by Order of the House.

There is another Instance of a Person taken into Custody by Order of this House; it was the Case of *Mr. Topham*, Serjeant of this House: The Party brought his Action, the Serjeant pleaded his Warrant, that it was done by Order of the House of Commons, and Judgment was given against him, and this Judgment stands unrevers'd.

Now what Method have you to reverse these Judgments, but by Writ of Error? If you think to do it by a Bill in this House, that must likewise pass the House of Lords, and so will be the same Thing as a Writ of Error.

Another Thing is said, That this Person was not damnify'd; or if he was, there are such a Number of Persons who were then likewise damnify'd, that may bring their Actions, that no body will execute such an Office. I think that Argument ought not to prevail, for at that Rate you will allow the Officer not only to be a Judge, but the supreme Judge, and the Parties damnify'd shall be without Relief; he may do what he pleases, and he shall never be question'd afterwards, save in this House, which I will consider by and by. 'Tis agreed, you may punish an Officer that misbehaves himself in Matters of Elections, and that is practis'd now very much; but at the same Time you punish the Officer, the Person damnify'd hath no Satisfaction, tho' our Law allows Satisfaction in Cases where he that did the Wrong shall not be punished, and allows Satisfaction in all Cases where a Person is punishable if another hath receiv'd a particular Damage.

A Man is liable to be fined to the King, or Queen, that is a Punishment; but if he pays so much to the Party damnify'd, that is Satisfaction. If a Man's Horse breaks into another's Ground, he shall not be punished, but the Person damnify'd shall have Satisfaction: But in this Case you allow the Officer shall be punished, but you will not allow the Man injured any Satisfaction for the Damage he has received, which cannot be supported by Reason, or by the Authority of any particular Case.

In all Cases I take it to be true, where a Man is punish'd for doing another Damage, the Person damnify'd shall have Satisfaction. But that Rule does not hold true in the contrary.

It is said there are a great many Persons concern'd, and if you give every one an Action, there will be no End of these Actions, and therefore none shall have an Action. This is a strange Argument: If a Man injures one, or two Persons, each shall have an Action for their respective Damages, but if he injures an hundred, none of them shall have an Action; as if when a Man is moderately injurious, he shall make Satisfaction; but if he is extravagantly injurious, he shall be Scot-free, and make Satisfaction to none. This rests to be made good either by Reason or Authority, which hitherto hath not been done. The Case cited, I own, is true, but you must take it with this Difference; if any Thing is done which might have been of Damage to a hundred People, but was of Damage to none, none shall bring their Action, tho' the Criminal shall be punished; but where there is particular

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Damage



Damage done to any Person, an Action will lie for the Damnification of that Person. If a Man digs a Pit, any Man may fall into it, and no Person shall bring an Action for that; but if any Person doth fall into it, and hath particular Damage by it, he shall bring an Action, and have Satisfaction. And with Submission, that Argument will not hold, that because a Person may be ruined if he be obliged to make Satisfaction for the Wrong he hath done, therefore he shall not make Satisfaction to any particular Person he hath damnified.

It hath been said, admitting it to be so, that the Party ought to have Satisfaction, yet he ought to take his Remedy in a proper Court; as if a Legacy was given, an Action would not lie in the *Queen's-Bench* for it, which is true. But it would have been well if that Gentleman had told us which was the proper Court to give Satisfaction for the Wrong supposed to be done in this Case. If the *Queen's-Bench* be not the proper Court, what Court is? 'Tis said the House of Commons is a Court, I was always of Opinion it was so: 'Tis a Court of Judicature, my Lord *Coke* says, and a Court of Record. I wonder, when all this is allowed, it should be said this Court hath not a Power to administer an Oath to a Witness; I think that was never denied to any other Court whatsoever. Every Court of Record has Power to administer an Oath; but tho' this be a Court of Record, this can't, it hath not that Power. It would have been very well if those who are against this Action, could shew us that this is a Court that can give Satisfaction; some Courts can punish, but can't give Satisfaction, whereof I think this one: Satisfaction was never given here that I know of, Was it ever? Or pretended to be had here? In the first Instance, 'tis true, this House hath punished, and by such Punishment compelled the Delinquent to make Satisfaction to a Person by increasing, or remitting such Punishment; but that is not the Case before us.

It hath been said, there has been no Instance of this Kind of Action brought, and that the Court of *Queen's-Bench* have declared they have nothing to do with the Business of Elections, for that the Right of Elections ought to be determined here; and for that Purpose the Declaration of the Lord Chief Justice *Hale*, in the Case of *Barnardiston* and *Soame*, has been cited. I must confess I can't but wonder at that Case: We did lately think that the Judgment given in the *King's-Bench* in that Case, was rightly given; and afterwards, when it was reversed, People were astonished at the Reason of it, and more when that Judgment of Reversal came to be affirmed in the House of Lords. No body hath ever said why that Judgment was reversed; I do not see but on the same Reason several Judgments within these few Years, nay, even in this Reign, may be reversed likewise. For the Court of *King's-Bench* in that Case, did not pretend to a Judicature of determining the Right of Elections, the Matter in that Case had been determined before in this House; but they only gave Damages for the Wrong sustained, that was all the Court did in that Case, and yet that Judgment was reversed. I believe there hath been some Judgment given by this House within these twelve Months, that where the House hath determined the Right of Election, the Party grieved

shall be allowed to maintain an Action at Law for his Damnification.

But I take it that there is a Difference between the Case of *Barnardiston* and *Soame*, and this present Case. Time was when it was doubted, where a Man that was elected, and the Officer refused to return him, whether the Person elected was damnified or not. 'Tis very certain heretofore Persons were not so ambitious of Sitting in this House as now they are; and some Persons purchased Charters of Exemption, to be excused Sitting in this House: And so it had been practised in the House of Lords. The Act that hath been mentioned before, expressly commands, that the Person chosen shall come and be present in Parliament. And afterwards there was a Penalty put upon such as were chosen, if they did not appear here; to which another Punishment was added, which was, The Person elected, if he did not come hither, he should lose his Wages. It was not reckoned a Damage that any Person was not returned a Burgess to Sit here, but a Kindness; but that did not hold so in the Case of an Elector. Every body agrees, as the Electors had a Right to chuse, so there was no Statute to compel them so to do; but they looked upon it not only as their Right, but their Interest, to be present at the Elections: And none can say, but 'tis a Man's Interest to make Choice of such a Person to serve in Parliament, who hath the Power over his Estate, and Life too for ought I know, as he could trust. No body ever doubted that a Person who had a Right to Vote, had an Interest, and might be damnified if his Vote was refused. So that none of the Cases that have been put of the Right of the Person elected to serve in Parliament, as Knight of the Shire, or as Burgess, come up to the Case in Question.

I would say one thing as to the Damnification of the Persons elected; there is a late Act that gives double Damages where the Return is contrary to the last Determination. Now I do take it, that Act supposes that a Man might have been damnified before; and if he was damnified before, he was so by the Common Law, for no Statute Law gives him any Damages: 'Tis true, that Statute gives double Damages, but still that Statute supposes there was a Damage before, and builds upon that Foundation; so that with Submission, that very Statute runs against all the Cases that have been put as to the Persons elected.

'Tis said, at this Rate, the Lords may come to Vote in Elections. I am of Opinion the Lords have no Right to Vote in Elections for a Knight of a Shire, or a Burgess; and the Reason I go upon is this, every Person who had a Right to Vote, ought to have contributed to the Expences of him that was elected. If he was a Freeholder, he was an Elector for the County; if a Burgess, for the Borough; and the Expences of the Knight of the Shire were to be levied of all the Freeholders, and the Expences of the Burgesses upon all that were resident in the Borough. But the Lords were excused of that Charge, they were not to be Contributors to the Expences of a Knight of the Shire, or Burgess, because they were of another House. There was a Law made which says, that for Lands purchased by any Lords, such Lands should continue chargeable to the Expences of Knights of the Shire, as they

they were before such Purchase; so that it's plain before that Act, the Lands the Lords were seized of, or purchased, were excused of that Charge.

But, Sir, I think this Matter is not to the Case in Question: This is nothing but a Collateral Action for a Damnification, whereof the Consequence is not much, not above five Pounds; tho' I acknowledge the Smallness of the Sum does not influence this Case. Nor is the Question, Whether the Lords have done Right, or not, in reverſing the Judgment given in the *Queen's-Bench*. *Humanum est errare*. If they have a Jurisdiction, we can't juſtly complain; tho' I am of Opinion they have done Right, I think the Plaintiff in this Case was damnified, and I think the Court of *Queen's-Bench* ought to have given Judgment againſt thoſe who did him the Injury for the Damage he ſuſtained; and I think the Lords have done Right in reverſing that Judgment; and in giving ſuch Judgment as the Court of *Queen's-Bench* ought to have given.

Sir *Edward Seymour*. 'Tis enough for me that we have the Law on our Side, and we are very much obliged to the Pains and Underſtanding of thoſe Learned Gentlemen that opened this Debate, in preſenting us with a true State of our Diſeaſe; it only remains now for your Prudence, to apply a Remedy. And I cannot but take Notice, that this is an Action without any Precedent to warrant this Proceeding; and I believe it might have remained ſo ſtill, (for I don't think there was Virtue enough in the Cöbler of *Ayleſbury*, nor had he Purſe enough,) if a Lord had not acted that Part.

For my part, Sir, I do not think this to be the ſingle Inſtance of the Houſe of Lords we have reaſon to complain of: I think in a great Meaſure, by their Proceedings, they ſeem to hold forth, *That the Ax is laid to the Root*, and that they have a Diſlike of this Houſe of Commons, and endeavour to get rid of them. I ſhall not inſtance in Particulars, but I hope there is one you will not let go, without applying ſome Remedy to, and that is, that noble Representation in which they have vilified you to the higheſt Degree, and lay all the Miſchiefs of the laſt Reign, and this, at your Door. I could ſhew you, there is nothing in it but Stuff, *Populum fallere*; and we ſee the Conſequence of it, and what Pains and Endeavours they have taken to diſperſe it all over the World, to make Impreſſions upon the People. But that which I would have ſome Reſort to, is this, That theſe worthy Perſons that have ſpoke before, tho' they have truly repreſented the State of our Condition, yet they have been very tender of applying a Remedy.

It does, I think, conſiſt of two Parts; one is what relates to the inferior Courts, the other to the Judgment of the Houſe of Lords upon this Writ of Error. Now that there is a Right to bring a Writ of Error, the Learned admit; but I would take away the Foundation, and make this Declaration:

That no inferior Court below ſhould preſume to intermeddle with the Elections of the Houſe of Commons; and I am ſure then there will be no Foundation for a Writ of Error. In the next Step, with relation to the Judgment given in the Houſe of Lords; 'tis true, the Lords make a great Complaint, That in Matters of Parliament we have addreſſed, without adviſing and conſulting with them. I will not ſay how

far 'tis juſtify'd by their Proceedings; I need not remind you of the Addreſs they made without you, when you addreſs'd againſt my Lord of *Worceſter*; before you had preſented your Addreſs, they preſented a Counter-Addreſs to yours. But I take the Diſtinction to be here, 'tis one thing in Matters of State, and another thing when the Matter depends between the Two Houſes: Where 'tis a Matter of State; with relation to the Queen's Prerogative being violated and invaded, as you are her Great Council, you are to adviſe the Queen in that Matter, and not let any thing of that kind paſs upon her.

But howſoever I would go the regular Way, by condemning this Judgment, in relation to the Houſe of Lords; and after you have made that Condemnation, I would apply to the Houſe of Lords, to ſee if they would recede from this Judgment of theirs. But I am afraid Arguments, or Debates, will help your Caſe but little; you muſt have recourſe to Remedies that are in your own Power. We ſee what they did upon the laſt Occaſion, when they thought their Privileges were concerned; they adjourned, and all to prepare the Way to make the World believe they were injured, and prepare them for their Proceedings afterwards.

And I ſay, this is not a Thing that falls out by Chance, but carried on by all their Power, to repreſent you as inconfiderable, and to make you uſeful for nothing but giving Money, and then to ſend you Home into the Country. But if you do not keep the Power in your own Hands, you will be without Remedy. I conclude with what I mentioned in relation to the Court below, to declare that they have no Power to intermeddle in Matters of our Elections.

Marquis of *Hartington*, (afterwards Duke of *Devonſhire*.) I ſhall not pretend to follow that honourable Gentleman near the Bar, in all the Steps he hath made, tho' I think I may be as regular as he. I think he hath only ſhewed, That there is not ſo much Reaſon in this Caſe to find fault with the Lords, but it is neceſſary to find fault with them one way or another.

I think this is a Matter of great Conſequence, and as long as I ſit here, and as long as I live, I ſhall be as tender of the Privileges of this Houſe as any body. I think 'tis upon the due Ballance of both Houſes, that the Safety of the Whole does conſiſt; and I muſt confeſs, I think the Liberty of a Cöbler ought to be as much regarded as of any body elſe; that is the Happineſs of our Conſtitution.

I think it was very well obſerved by an experienced Member, That this Writ came very regularly before the Lords: If ſo, then I think the Queſtion is between us, and the Perſons that elected us; and I think, tho' Gentlemen would not formerly allow of any Diſtinction between the Privileges of the Houſe, and thoſe of the People of *England*, yet they muſt allow it now, or they can't complain that this Action is any Prejudice to this Houſe. For when a Perſon offers his Vote at an Election, and is not admitted to give it, and upon ſuch Refuſal brings his Action in the Courts in *Weſtminſter-Hall*, (which I take to be the preſent Caſe,) if giving Judgment upon it be contrary to the Privileges of this Houſe, then 'tis pretty plain, that our Privileges do interfere with the Rights of the People that elected us.

I ſhall



I shall plainly give you my Opinion in this Case: I can't think this Action to be a Breach of the Privilege of this House; for, Sir, the Party grieved, can be no way relieved, but by applying to the Law, and I think the learned Gentleman below, is out in all his Instances; for he hath given an Account of People injured applying to you, but they were Candidates, and certainly that was their proper Remedy; but in the Case of an Elector, I don't see he can have Satisfaction by applying to you.

Gentlemen talk of the Law of Parliament; I can't see how that can give any Interruption to the Law of the Land, that it shall not do Right to the Party grieved: How shall a Man injured in the manner I have mentioned, receive Satisfaction, by applying to the Parliament? 'Tis true, the Officer offending may be punished, but the Party injured can't receive that Satisfaction he would in the Courts below, by giving him his Damages.

I think this is a Matter of great Consideration, and it is necessary to consider well of it, and not to determine rashly. I think it may be of Use to us, since there are Judges who have been of Opinion, That the Subject ought not to have his Remedy in this Case. A Judge that will out of Fear, or any Regard to one House, do contrary to his Oath, I believe at another Time will be influenced by the other. I think 'tis the Duty of a Judge to act according to Law, and not be afraid of either.

Mr. Lowndes. Sir, There is no doubt but all the Judges, (as hath been said,) and every body else, are obliged to behave themselves according to the Laws of the Land: But the Question is, What is the Law of *England* in this Case? If the House of Commons has an Original Right to determine all Matters concerning Elections of their own Members, (as it hath been always understood to have,) and if we have a Power to punish Officers for making false Returns, or any other Misfeazances committed by the returning Officers; then it will not be necessary that the Judges in *Westminster-Hall* should have any Jurisdiction at all in the Matter now in Question; and if they have none, then by Consequence the Lords will have as little by Writ of Error.

I do confess, Sir, when I first heard of this Case, it gave me some Apprehension that it might be of fatal Consequence (by reason of the Novelty of it,) to your Privileges, which are indeed the Privileges of the Commonalty of *England* which we represent: But since I have thought of it from Time to Time, and it hath been better opened by the Learned Gentlemen that have spoke in this Debate, I conceive our coming to some Resolutions declaratory of our Right in this Affair, may preserve the Liberties of this House, and of all the Commons of *England*, who have entrusted us with the Preservation of their Rights.

I think the learned Gentleman over-the-way, took his Ground too narrow; I might yield him this Point, That where there is a Writ of Error brought from a Judgment in *Westminster-Hall*, in Cases where a Writ of Error lies, and where that Court, and the House of Lords have a Jurisdiction, there the House of Lords are at Liberty to give what Judgment they please. But I have read, the House of Lords is not an unlimited Jurisdiction, but is bounded as well as the Courts of *Westminster-Hall*, by the Law

of *England*. I speak it with the greatest Reverence, that the Regal Power (which is the most Supreme in *England*;) is obliged to the Observance of the Laws; and it would be absurd at the same Time, to say, That any Part of the Parliamentary Constitution is not limited by the known Laws of the Land, or the Laws and Customs of Parliament; and I doubt not but it will appear, a Writ of Error doth not lie, and never did lie before the Lords in such a Case: And so it comes at last to this Point, What is the Law of *England* in this Case? And I will tell you my Thoughts of it.

I have read, and learned, and believe 'tis true, That Matters of Parliament are to be determined by the Laws and Customs of Parliament; and I believe there is as good Authority for it, as there is for Writs of Error, or any thing else; and that this Law and Custom of Parliament is a principal Part of the Law of *England*, and to be learned by Experience and Precedents, and I reckon that we must come to them at last. Now, Sir, let us see what Experience or Precedents we have to found this Jurisdiction of the House of Commons upon, for examining and determining Matters concerning their own Elections. 'Tis true, we have no Journals extant before E. VP's Time: And there is a Book they call *Seymour*, I think 'tis a Book of no great Authority; and if it be, there is but a small Matter in it. I have read it over carefully my self more than once, and find only Titles of Bills depending, and when they were read; and all I learned from it, was, that sometimes Bills in those Days were read four Times. And, Sir, there is as little concerning Elections in Queen *Mary's* Reign; but in the Beginning of Queen *Elizabeth*, you have the Matters of Elections plainly set down, and so they have been ever since. And from that Time to this it hath been a standing Rule in the House of Commons, in the Beginning of every Parliament, and (as I take it) of every Session, to appoint a Committee to examine all Matters concerning Elections. Now, if the Right of Electors is not a Matter concerning the Election, then I own my self under a Mistake: But if that be a material Part, and comprehended within the general Words; and if those Committees have from Time to Time proceeded to examine the Right of Electors, and this House hath proceeded from Time to Time to give Judgment in such Cases, sometimes according to general Qualifications settled and adjusted in the House, and very frequently upon examining and considering the Rights of particular Voters, then I think we have as good Authority for the Jurisdiction of this House in the Matter of these Elections, as can be had for any Thing whatsoever.

I do say in this Case, we ought to take our Ground and Foundation upon the Right which the Commons of *England* have, and ever had, by the Law and Customs of Parliament, to be exercised by the Representatives of their own choosing; which Right is grounded upon manifold Precedents and constant Usage. For if we have a Power to hear and determine the Right of the Electors, and to punish Officers for abridging them of their Right, and give Satisfaction to the Party, all which most evidently appears, not only in your Journals, but by a continued and uninterrupted Practice, Time out of Mind; then I think we need look no further.

I do



I do say, that from Time to Time there has been never a Session of Parliament, but this Power has been exercised; and in your Committees they have often come to Resolutions to determine the Right of all Electors, and frequently of particular Electors; and for that Purpose only they have examined, whether Persons had Burgage Tenures, or have paid Scot and Lot, or have been Freemen, and other Circumstances necessary for the Information of the Committees; and as Matters have appear'd, they have judg'd them qualified or unqualified: And where the Votes of Persons having Right have been offered, tho' refused at the Election, the Committees have usually allowed those Votes as if they had been given, and upon their Determination the House have agreed with the Committee very frequently, and sometimes have disagreed with the Committee, as the Merits of the Cause have appeared to the House. So that nothing is plainer, than that the House of Commons have, from Time to Time, exercised this Jurisdiction in all the Parts of it; and sometimes Elections have been tried at the Bar, and determined by the House upon such Trial.

Then how comes this Action to be brought in *Westminster-Hall*? I have considered that Point, and take nothing to be plainer than this, That *Westminster-Hall* never had a Power to meddle with Elections, but where by some special Act of Parliament you have given them Power. I know that there are some Opinions, that Elections have been try'd in Chancery, and in the House of Lords: But I can't find any thing of that Nature ever settled, though some Attempts have formerly been made that way. I know that Witnesses have been carried up sometimes to the House of Lords Bar to be sworn, but the Trial of Elections, and of the Right of the Electors, hath always been in the House of Commons; so that here would be no Defect of Power, or Justice, if no body else meddled in this Matter.

Then consider what Acts have altered this Original Right: I think there are two that are most material to be considered; one is that of 23 of H. 6. cap. 15. What is the Importance of that? It takes Notice, that convenient Remedy for the Party griev'd was not ordain'd in the former Statutes against Sheriffs, Mayors, and Bailiffs offending; whereby one would infer, that the Parliament in those Days did not think, or know any thing of the Remedy now endeavoured to be set up in *Westminster-Hall*, and the House of Lords. And this Statute provides, that if any Sheriff do contrary to the Statutes about Elections, he shall incur the Penalty of the former Statutes, viz. one hundred Pounds to the King, and a Year's Imprisonment, and shall forfeit a hundred Pounds more: To whom? To the Party that ought to have been return'd, and if he do not Sue, there is an Action given for the same to any body else: And a Mayor, or Bailiff, for a false, or undue Return, is to forfeit to the King forty Pounds, and forty Pounds to the Party that should be return'd; and if he do not Sue, then a popular Action is given for the last Penalty: So it is plain by this Statute, no Action is given to the Voter, who had his Remedy in the House of Commons. Your Ancestors were so careful of your Liberties, that they never trusted their Elections to all Persons; such

as held in Villenage, all Customary Tenants who held at the Will of their Lords, and might be influenced by them, and, (as I take it,) Tenants by Efcuage, 'till Efcuage was reduced to Certainty, were excluded, and afterwards all Freeholders under forty Shillings a Year: And when the Officers were by Law to admit some Votes, and reject others, they were to use the best of their Judgments, without being liable to Multiplicity of Actions, (unless in the Cases I have mention'd,) but for their Defaults were always responsible to the House of Commons.

Let us consider then the Statute in King William's Time, I think 'tis in the seventh Year of his Reign; there the Statute takes Notice of the Injury done to Gentlemen by double and false Returns, and thereby a double Return is made a false Return; and by that Statute 'tis provided, That if any returning Officer return contrary to the last Determination of the House of Commons of the Right of Election, such Return is thereby adjudg'd to be a false Return, and void.

This Statute of the seventh of King William, admits the very Determination of the Right of Election to be in the House of Commons; it does not say the Determination of the Election, but of the Right of Election. I will endeavour to avoid Repetition.

But how does this Matter stand by the Law and Custom of Parliament, which is a most material Part of the Law of England? The House of Commons have the Jurisdiction in these Matters of their Elections, but by one or two Statutes, the House of Commons have given Power in one or two Cases to proceed in the Manner therein prescrib'd; but none of the Cases allow'd by those Statutes, are like the Case of this Man at *Aylesbury*, for he is not a Person who has suffer'd because he was not duly return'd, nor the Person mention'd in 7 *Willielmi*; nor is his Action founded upon any Statute; so that this Case is left out of the Statutes, and it must be determined according to the Law and Custom of Parliament.

As to the Case of Mr. *Nevill*, it never came to be determined in Parliament: We read it was put off to the Parliament, because of the great Weight of it; and the Judges were of Opinion, That it was a Matter too high for them. And in the Case of Mr. *Onslow*, where the Case of Mr. *Nevill* was cited, they positively said, It was a Matter of too great Presumption for the Judges to meddle with it.

Then how comes it to pass, if this Action might have been brought at Common Law; I say, how comes it to pass, that this Action was never brought before? Certainly that is an Argument it never lay, for there must have been Occasion for such an Action, if the Common Law would have maintain'd it. But the Judges, who knew best the Grounds and Reasons for this pretended Action, have refused meddling in this Matter, because it concern'd the Parliament, and the Parliament had not entrusted them with it.

As to the Case of *Barnardiston* and *Soame*, first adjudg'd in the *King's-Bench*, the Reason was, because it had been adjudg'd in Parliament; for Sir *Samuel Barnardiston* had a Majority by near a Hundred, and the House of Commons had tried the Cause, and gave him his Right of Sitting in this House; so that one would have thought that he had Liberty to have gone into *Westminster-*



*Hall.* But afterwards this Judgment was revers'd in the *Exchequer*; and Judge *Ellis* in his Argument says plainly, That the Right of determining Elections belongs to the House of Commons, and the House of Commons have determined it for Sir *Samuel Barnardiston*, and for that Reason you ought to affirm this Judgment.

This Matter was brought presently after the Revolution into the House of Lords; and when it came there, all but Five or Six Lords were for affirming the Reversal. Now, Sir, by reading the Reasons of these Five or Six Lords that dissented, we may easily infer what were the Reasons that induced the whole House to affirm the Reversal. Two Reasons were given: First, said they, because otherwise there will be a Defect of Justice. One may infer, if these Five or Six Lords were of Opinion, that there would be a Defect of Justice, all the other Lords were of Opinion, there would be no Defect of Justice. The Five or Six Lords that dissented, said, That the Plaintiff ought to have this Action by the Common Law. Certainly, if the other Lords had been of this Opinion, they would have maintain'd the Action; but they concluded no such Action did lie, because no such Action was given by the Common Law.

I take this Matter to be of infinite Moment; and I think there is no Degree, or State in this Realm; but what is bound by the known Laws of the Land; and if the Lords in Parliament, and the Judges are limited by the Laws of the Land, so that they have no Jurisdiction in this Case, then I do not see how a Writ of Error can give them Jurisdiction.

Sir, I appeal to you, and all the Gentlemen here, Whether what hath been said on one Side hath been at all answered by the other: If an Action of *Scandalum Magnatum* should be brought against a Member for what he has said in this House, no doubt but that Member would plead the Privilege of this House, and 'tis to be hoped the Judges would allow it, and put the Plaintiff off *sine die*. But notwithstanding, a Writ of Error, according to this Doctrine, might be brought, and the Lords might give Judgment that this Action does lie, and then what would become of your Liberty of Debate? This is an Instance worthy your Regard.

It hath been told you, how the Lords have taken Notice of the Privileges of this House in the Case of *Hollis* and *Elliot*. Let that be set in its true Colours, and see whether any Thing can be drawn from that Case to fortify the Judgment lately given in the House of Lords. There was a Disorder in the House of Commons, and the Speaker was violently forc'd back into the Chair, and scandalous Words against the King's Privy Council and Judges, were utter'd by *Elliot*, *Hollis*, and others, and upon that a Prosecution was brought, 5 *Car. primi*, against those particular Gentlemen in *Westminster-Hall*, as well for the Words spoke in the House of Commons, as for the Force, and Fines were set upon them. This Matter, after the Restoration of *Charles II.* was brought before the Lords at a Conference, and they took Notice of the Privileges of this House, not to set them aside, but to confirm them; and their Lordships declared the Judgment to be illegal, and against the Freedom and Privilege of Parliament, and desired the Lord *Hollis* to bring the Roll before them by Writ of Error; and so by Agreement the Judgment was revers'd, as

being against the Freedom of Speech in Parliament, allow'd by *Strowd's Act*; which their Lordships acknowledged to be declaratory of the ancient and necessary Rights and Privileges of Parliament. Their Lordships then would not let any Matter appear upon Record to destroy the Commons Privileges, and I wonder how this Precedent comes to be cited to justify a Proceeding which tends directly to take away your Privileges.

I wish with all my Heart the House would have appointed some Persons to have searched Precedents, and I am sure they would have found an infinite Number to be produced, to have justified the Power of the House in this Case, how it hath been in their Power, Time out of Mind, how they have a Power to punish Officers, and in some Instances, they have given Damages.

I remember one in my Time; Mr. *Tankred* caused a Person to be brought hither, and he clear'd himself; and the House (as I remember) made an Order, That as he was the Occasion of the Man's coming up, and had done him an Injury, he should make him Reparation, and he was forc'd to do it, by paying him a Sum of Money.

Not that I would go so far as to say, That this House is a proper Court for imposing Fines: But if they are not a proper Jurisdiction for the Business of their own Elections, I think they have no Jurisdiction at all. I will not say this House has a Power to Fine: I know we read something of that in your Journals, but I think those Fines came to nothing, because there was no Means to estreat them, or cause them to be levied; and so that Matter has slept ever since, and, I hope, will for ever.

But not only your Freedom of Debate, but Right of Sitting in this House, is concern'd in this Case: And if you have not a Power to determine Matters of Elections to this House, I wonder how any Author comes to say this House has any Judicature at all; for if they have not a Jurisdiction to this, they have no Jurisdiction to any Purpose whatsoever.

If this Point be settled, That this Power belongs to the House of Commons, the next Consideration will be, how to attain it; and in this, I hope Gentlemen will take such Steps as are proper for them, and for those they represent; for we are sent here *ad tractandum*, &c. in the Name of those we represent: And we have but a delegated Power, and can't, without Breach of Trust, give up the Rights of the Commonalty. For my own Part, I have taken an Oath to preserve the Privileges of the People that chose me, but without such an Oath, should be of Opinion, that I cannot give up this Privilege which I am to execute on their Behalfs; but I will use all the lawful and just Methods I can to come at it, and I think you may do this, without interfering with the House of Lords, or the Judges. There is no doubt, but the Judges in *Westminster-Hall* are bound to take Notice judicially of your legal Proceedings here; and if you come to make a Declaration, "That the Power of hearing and determining all Matters concerning Elections, does belong to the House of Commons in Parliament," I doubt not, but they will take Notice of it as becomes them. And give me Leave to say, no body can help bringing this Action as this was done; for a Person may take out a Writ, and declare upon it, and carry it down to Trial, without the Privy, or Knowledge of any Court; and



and then when the Cause is tried, the other Side comes and moves in Arrest of Judgment, and the Court gives Sentence. But I wish the Defendant had demurr'd, and then that would have put it as a Point of Law to the Judges; and if they had determin'd it judicially for you, I believe it would have gone no further. For it is one Thing to determine it upon Demurrer, and another Thing, when the Cause has been try'd, and Damages given, to have the Court's Opinion *ex post facto*.

The Judges determined, the Action does not lie; but as Matters stand now, perhaps, in the like Cases, there will be brought a Writ of Error before the Lords, and they will give such a Judgment as they have given now, for ought I know. I should not think it proper to come to any Question now, by which you shall determine your Right, if you are not fully satisfied about it; but it ought to be considered farther. The Law and Custom of Parliament is to be found out by Experience and Precedents: But if you are satisfied, then I think the proper Question is, "That by the Law and Custom of Parliament, the hearing, examining, and determining all Matters concerning Election of Members to serve in the House of Commons, is to be by the same House." I think that is to be your Question, or to that Effect.

The Consequence will be, If this be Part of the Law of *England*, as it plainly is, you may as well stand upon that Declaration, as upon any new Law to be made by Parliament, if you could get it: But I believe you have no great Reason to expect a new Law in this Case to pass in the House of Lords. Then what would you do? If you should try to get a new Law, and fail, it will be construed, that you had not this Power before, but endeavoured to get it, and the House of Lords denied it you.

But 'tis plain and clear you have this Power already, and a sufficient Ground to stand upon; and I doubt not, but *Westminster-Hall* will take Notice of it, and the House of Lords too: If they do not, (*here Mr. Lowndes was interrupted by a Noise made by some few of the Members, who said, What then? But he proceeded,*) I say, if they do not, it will be Time enough to confer with them afterwards: And give me Leave, I am not afraid to say, if a private Man, much more the House of Commons, have the Law of *England* on their Sides, let them be undermin'd ever so much, one Way or other, they will obtain their Right sooner or later. The Rights of the People of *England* are safer in the Hands of their Representatives than any other: If they do not like them, they can turn them out, and chuse new ones; but they can't do so in the Case of the Lords.

I beg Pardon for my great Prolixity; I take it to be of Importance, to avoid all Contests with the House of Lords, and with *Westminster-Hall*, and I think you may do it by proposing and adjusting a plain Declaration of your Right by the Law and Custom of Parliament.

*Mr. Solicitor-General*, (Sir Simon Harcourt, afterwards Lord Harcourt, and Lord Chancellor.) After what hath been said at large concerning the Law in this Case, especially since it hath received no Contradiction in any Instance whatsoever, I will avoid the Repetition of what has been already offer'd, and endeavour to shorten your Debate, by bringing it something towards a Point.

It hath been said, That the Question now before you is, Whether Judgment being given in the Court of *Queen's-Bench*, a Writ of Error does not lie in the House of Lords, to reverse that Judgment? I cannot, by any Means, agree that to be the Question.

But that which I take to be the proper Question before you is, Whether or no it be the sole Right of the Commons of *England* to determine their own Elections? If you are of that Opinion, never let your Disease grow to such a Head as to put you upon the Necessity of complaining of a Judgment of the Lords, but rather check it in its Infancy.

It may, perhaps, sound harsh, That a Man shall not be admitted to make Use, and have the Benefit of the Law; and yet when that Thought is thoroughly digested, I believe no Gentleman in this House, but will agree, That there may be many such Instances, where you will not endure any Suit at Law. I can't give you any better Instances, than what have been mention'd to you by a learned Gentleman on the other Side, who approves of this Proceeding by Writ of Error; the Prosecution against Sir *William Williams* for publishing a Libel, (as it was call'd,) by Direction of this House, and an Action against the Serjeant for obeying your Commands. If such an Action should be brought against the Speaker or Serjeant, should we sit still here to see what they would do in the Courts below, and afterwards wait for the Event in the House of Lords by Writ of Error?

'Tis very true, these Judgments that are mention'd by that Gentleman continue still unrevers'd. As to that given against the Speaker, he mention'd it as a Precedent not fit to be follow'd; indeed, 'tis a Reproach to the House to mention it, since no Parliament hath revers'd it. As to the other Action against the Serjeant, he says, Judgment was given against him, and that stands in full Force; as I remember that Case, it went off upon the Form of Pleading.

But nothing of that Kind being the Question now, I beg Leave to state what this Action is that is now before us: For Gentlemen in the Country, who have frequently met with Actions, prosecuted without Censure for Matters relating to Elections, may, perhaps, be surpris'd, 'till they come to consider what the Point is. This is not an Action grounded upon any Statute whatsoever. 'Tis agreed an Action may be maintain'd where a Statute gives a particular Remedy, but this is an Action founded upon the Common Law. Whatever your Privileges are, if you will consent to an Act of Parliament to make other Persons Judges of those Privileges, so far as you consent, if they pursue the Power given them by Act of Parliament, there is no Wrong done you: But an Action brought at Common Law is that which, I think, interferes with the inherent Right of this House.

We have, I think, attain'd to one Piece of Knowledge upon this Debate, That this was the first Action that was ever brought of this Kind; and Gentlemen will not much wonder why this is brought now, when they consider what Endeavours have been used to make this House contemptible. I believe this may be thought the most probable Method to attain that End.

I would not repeat the Precedents that have been quoted, yet I can't but take Notice of that of *Barnardiston* and *Soame*: Those Arguments that



that were made use of for this Judgment in that Case were rejected, and the Judgment of the Lords was then directly contrary. I should be very glad to hear how the Lords Judgment of Reversal in that Case, and in this are reconcilable. The Commons, at that Time, would scarce have suffer'd such an Attempt upon their Privileges, and I hope we shall be as careful and as zealous to preserve ours: We have as much Power as our Predecessors, we shall never suffer for want of Power, if we do not suffer for want of Will to exert it.

I expect to hear of the great Authority of one learned Judge, that differ'd from the rest; I have the utmost Esteem for his Judgment, but am sorry to hear any Insinuation, that those Judges who have given their Opinion otherwise, are guilty of a Breach of their Oaths. It hath been touch'd upon, That whenever any Question has been ask'd the Judges, concerning the Privileges of the Lords, or the Privileges of the Commons, their Answer is recorded for the Instruction of all their Successors, and to the Honour of both Houses of Parliament, That it was a Matter above their Knowledge: The Law of Parliament is above the Judges of the Common Law, and is not to be subject to their Judgment; 'tis *alieni fori*.

And, Sir, as I have been inform'd, this was the Answer given in the House of Lords by one of the present Judges, and by what I have heard, it was well he escap'd their Censure; shewing too much Respect to this House gave very great Offence.

I beg Gentlemen to consider, (I shall not enter into Particulars that have been mention'd) Whether any thing of this Kind would not make you despicable, to the lowest Degree, in the World, and expose Electors to such Mischiefs that none could endure? Upon every Election that comes before you, 'tis impossible to judge the Right of Election, but by the Right of the Electors. If you will endure any Person, after you have said he has no Right, to go into *Westminster-Hall*, and bring an Action in the Courts there, a Jury may find a Verdict, That the House of Commons are mistaken, and that this Person hath a Right, and Judgment shall be given accordingly. Will not this Proceeding, that very Moment, submit your Resolutions to the Examination and Censure of the inferior Courts? May not they say, They Vote for one another, we have detected them all? That they are a Parcel of People pack'd together, and not one of them elected as they should be?

What Condition the Magistrate will be in, hath been mention'd already; when a Multitude hath a Right, and every body may bring his Action, Can any Magistrate, (a Constable, as in this Case,) bear the Expences of a hundred or a thousand Actions at Law? There will not be wanting some to prosecute a Magistrate with all the Violence possible.

Tho' I can by no Means agree, That this Matter is to be determin'd according to the common Rules and Methods of Law, but according to the Course of Parliament; yet I shall compare it with some other Cases in the Law.

That which makes these Persons Hardships the greater, is, These Magistrates are not People that officiously interpose to take a Poll at Electi-

ons, and make a Return; but these are Men, who, by the Duty of their Office, are oblig'd to do it; and if they do not execute their Office, you punish them; and if they do execute their Office, and give you Satisfaction, yet if you let this be examin'd in another Place, after you have said they have done well, they may be punished for doing so.

I will compare this with one or two common Cases that have not been mention'd: Suppose a Person should exhibit an Indictment against another maliciously, he does this wilfully, and an Action does lie against him; but if a Grand Jurymen find a Bill against a Man, the Law will not admit an Averment that it was done maliciously, because he was oblig'd by his Office to do it: So it is in the Case of a Witness, because he is brought in by the Process of the Court: So it is in the Case of Judges. And is it not equally the Duty of a Magistrate to determine upon the Poll, and afterwards to make a Return? And is not that examinable before you?

A great deal might be said further upon this, but I hope 'tis pretty unnecessary: And that no body can have any doubt but that our Privileges are very much concern'd in this Question, and what the Consequences would be; therefore I would humbly propose for the Question what another Gentleman hath hinted at, which may reduce this Debate to a particular Point.

We certainly have such a thing as the Law and Custom of Parliament, and that is very well known, and upon that Foot I desire you would put a Question to this Effect.

“ That the sole Right of examining and determining all Matters relating to the Election of Members to serve in Parliament, except in such Cases as are otherwise provided for by Act of Parliament, is in the House of Commons; and that neither the Qualification of the Electors, or the Right of the Persons elected, is elsewhere cognizable, or determinable.

*Members.* The Question, the Question.

*Mr. Smith.* Sir, I speak only to your Order, That Gentlemen would not interrupt one another by calling for the Question, but give diligent Attention to the Debate, for this is a Matter of great Consequence.

Then *Mr. Freeman* (in the Chair) stated a Question on his Paper to the Effect propos'd by *Mr. Solicitor*, and read the same to the Committee.

*Sir Christopher Musgrave.* I am very willing to hear any Gentleman that will stand up and speak, and you have had a very good Hint given you by an honourable Person, that this is a Business of great Moment; and I hope we shall continue to do as we have done, that is, to hear Gentlemen patiently; and that we may not be guilty of any Disorder, I move you for Candles to be brought in.

Then the Question was put, and carried for Candles.

And they were brought in accordingly.

*Mr. Dormer*, (afterwards a Judge.) *Mr. Freeman*, you have now a Question upon your Paper, but that which I take to be the Question, is, “ Whether a Freeholder, or a Freeman, who hath a Right to give his Vote for his Representatives



"sentatives in Parliament; may arbitrarily and  
"maliciously be depriv'd of that Privilege, with-  
"out any Redress in any Court whatsoever.

This I take to be the Case before you; 'tis said to be of great Consequence, and I do take it to be of as great Consequence as any thing that ever came before either House; and I don't look upon it only to concern the Jurisdiction of the Lords and Commons, but to affect every Part of the Constitution, and the Queen, the Head thereof, in the highest Degree. For it comes to this, If the Lords have not a Right to determine in this Matter, which by Writ of Error is regularly brought before them, we shall be turn'd into a State of Villenage, and the People will be depriv'd of chusing their own Representatives without Relief, and shall not have Relief by her Majesty in the Court of *Queen's-Bench*, nor before her in the Court of Parliament, where, in Consideration of Law, she is always present, and where by our Law is the last Appeal; and there will be a Failure and an Interruption of Justice, and our Constitution, in relation to our selves, will be so far chang'd, that 'twill be impossible there should be any right Representatives of the People: For 'twill not be the People then that will chuse, but the Officer may arbitrarily refuse and return whom he thinks fit, and the particular Person will be without Remedy. For whatever Gentlemen apprehend, if the Right of Return be not controverted, which way can any particular Man bring his Case before you? And what Remedy shall he have if not by Action? I will not say there has not; (but I will turn the Argument, and put it upon them to shew there has;) but I believe there never was any particular Application to the Committee of Privileges, where the Injury has been done to a particular Man, which is the present Case: And this Matter is found by a Jury that was struck, and not one Man of the Jury but of Quality, and approv'd on both Sides: And I think, tho' it never came before the Parliament, nor the Committee of Privileges, they might consider of a particular Injury.

And as for the Notion that hath been taken up, That where the House of Commons have a Jurisdiction, there the Party is in all Cases without Remedy in any other Court: Sure that is not according to Truth; for in the Case of a false Return, there is a publick Injury, that does not hinder the Party from obtaining Satisfaction as to his particular Injury; and if no Action lies, there can be no Satisfaction; for this House hath not awarded Damages in any Case, notwithstanding the Case cited; for that was only Costs for the Man's Trouble in coming up to be examin'd before this House. And if they should award Damages, there is no way of levying those Damages: What Writ can we issue out? And if this Person be without Remedy at Law, he must sit down without any Redress whatsoever.

There may be a Multitude of Cases where this House hath a Jurisdiction as far as concerns the Publick and themselves, and the Party shall have his Action also.

If I receive a Blow in this House, 'tis a Violation of the Privilege of this House, and this House can take Jurisdiction of it, and censure the Person that hath done the Injury; but will any Man say, That an Action of Battery will not lie at the Common Law in that Case?

There was the Case of Sir *Thomas Clarges*:

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At the Time of his Election there was one *Roe* spoke Words to his Prejudice; he might certainly have complain'd to this House of it; (you had an Instance, I think, last Session, of one that complain'd for some such Injury against the Lord Bishop of *Worcester*, and the House took it into Consideration, which Sir *Thomas Clarges* might have done,) but he brought his Action, and recovered considerable Damages; and afterwards a Writ of Error was brought in the *King's-Bench*, and Judgment was affirm'd.

There is a Case not within any Provision of your Law, and that is, where a Sheriff made a Return, and he delivered this to a private Messenger to bring up to the Crown-Office. The Messenger, by the way, thought fit to vitiate the Return, and make another Return than what he receiv'd from the Sheriff: For this an Action was brought, and he recover'd at Law against this Messenger for the private Damage he had done him. Certainly otherwise the Law would be defective.

In another Case, the Sheriff adjourn'd, in Prejudice to a Candidate, to a Corn-Field; an Action was brought against this Sheriff at Law for the Damages he had done this Gentleman, and it was maintain'd; and I dare say more Cases may be put: Which shews that you having a Jurisdiction as to what concerns the Publick, does not exclude the Party, but he may have an Action for his private Injury.

A great many Positions I have heard, which I take not to be true, particularly this, "That there is no Remedy at Law, but in Cases provided for by the Statutes." That is not so, these Statutes imply the contrary. The first says, Whereas there was not a sufficient Remedy, therefore that gives a more compleat Remedy, and so the Judges declar'd in the Case of *Barnardiston* and *Soame*.

Sir, They have told us of the Cases of *Barnardiston* and *Soame*, and of *Nevill* and *Strode*, with humble Submission to you, those Cases go so far as to prove the Jurisdiction of the Lords, and the inferior Courts: That of *Barnardiston* and *Soame*, was an Action try'd before the Court of *King's-Bench*, and a Set of as learned Judges as ever were before, or since, and three of them were of Opinion for the Action, and my Lord Chief Justice *Hale* was one of them; who, the Term before he surrendered his Character, did thus express himself: "He gave Thanks to God that he had spar'd him to that Time; that he was able to keep his Cushion, and declare his Conscience in that Place." But afterwards it had its Fate, a Writ of Error was brought in the Exchequer-Chamber; Mr. Justice *Levinz*, that reports it, says it appears, That those who argued against the Judgment in the *King's-Bench* were made Judges, and they themselves afterwards determined the Case. And every body knows how valuable it was at that Time, to know the Price of an House of Commons, and an *English* Parliament. Three Judges were then made in the Exchequer, and I think two in the Common Pleas. Afterwards it came into the House of Lords, and there the Reversal in the Exchequer was affirm'd, for Reasons different to what are urg'd now, and I believe for several good Reasons. The Sheriff in that Case had made a double Return, and the Sheriff might do it for his own Indemnity, for it was no more than finding a special Verdict; and therefore the

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Saying,



Saying, *falso & malitiose*, being put to a Thing that was in itself right, it would not alter the Nature of the Thing. Another Reason they went upon was, they said this double Return was a void Return, and for that Reason the Action did not lie; and upon these Reasons depended that Judgment. That Gentleman who said that only four or five Lords dissented, is under a great Mistake; four or five Lords only I believe entered their Dissent, but there was a great Number, and near an Equality against that Judgment; and divers Lords now in that House were against that Judgment, that did not enter their Dissent.

Then, Sir, there is the Case of *Nevill and Strode*; and that was first a Judgment in the Common Pleas, and when it had taken its Progress in *Westminster-Hall*, it came before the House of Lords; and the Lords return'd it back again to *Westminster-Hall*, and order'd all the Judges of *England* to deliver their Opinion in it. That was founded upon an Ordinance of those Times, *Berkshire* was to send five Knights, and *Nevill* was one of them that were elected, but not return'd: There they said, in that Case that Ordinance was intirely new, and that Case did not recommend itself by the known Laws of the Land, and for that Reason they would not give Judgment, for Wages could not be levied for five such Knights. And when afterwards they were to give Judgment, the right Constitution had recovered itself.

Now, as to the Lords Right to receive a Writ of Error in this Case: You have address'd to them that they would receive a Writ of Error at a Time when your Privileges were invaded. That was the Case of my Lord *Hollis*, who with others was inform'd against, 5 *Car.* for having spoke Words in this House that did affect the Government: And he pleaded to the Jurisdiction of the Court, (Is there any such Thing here? No, they have submitted to it;) and the Court over-rul'd their Plea to the Jurisdiction, and that Judgment continued in Force, (as some others which have been since do now, which it were well if they were revers'd,) 'till this House took Notice of it; and in 1667, they desired a Conference with the House of Lords. The Chairman was my Lord Chief Justice *Vaughan*, and this House there complain'd how they were griev'd by that Judgment; and after repeated Conferences, both Houses did consent to this Expedient, That my Lord *Hollis* being the only Survivor, should be desired to bring a Writ of Error in the House of Lords, and he did so, and the Lords in that Case did you Justice, and revers'd the Judgment.

As to your passing this Vote, what it will signify, I cannot tell. What signified a Vote you passed before about the Year Eighty, That the putting the Laws in Execution against Protestant Dissenters, was an Injury to the Publick, and a Subversion to the Government; and that those that put them in Execution, should be looked upon as Enemies to the King and Kingdom? The Consequence was, That all the Laws against Popery were put in Execution against Protestants more than they were before. The Judges in *Westminster-Hall* said, This Vote had not passed into a Law, and they could not take Notice of it. I hope we shall do nothing that will lessen our selves, nor any thing but what will be effectual for the Ends for which 'tis propos'd.

Sir *Joseph Jekyll*, (afterwards Master of the *Rolls*.) Mr. *Freeman*, I consider you have been a long Time in this Debate, and a great deal of it has been spent, either in Suggestions contrary to what appears before you, or else in Questions altogether improper for the Consideration of the Committee; and therefore it is necessary to look back to that which gave Occasion to the present Dispute.

The Committee hath a Copy of the Proceedings of this Action referred to them, but it hath not been read; and I am confident if it had, and had been attended to by Gentlemen, they would scarce have said that the Lords, in the Judgment they gave, did any thing in Opposition to your Judgment, or in Derogation of your Privileges.

Before the Action was brought, there was a Resolution of the House of Commons, That the Right of Election for the Borough of *Aylesbury*, was in the Inhabitants not receiving Alms. 'Tis from that Resolution the Plaintiff hath taken his Rise, and has brought his Action; for by this Declaration he makes his Case to be, that he was an Inhabitant of that Borough, not receiving Alms; and that the Constables falsely and maliciously obstructed and hindered him from giving his Vote at the Election there. The Constables plead, *Not Guilty*, and the Matter goes to a Jury, and they find for the Plaintiff, and give him five Pounds Damages: Which is in Effect a finding that the Plaintiff was an Inhabitant, not receiving Alms, and that he was obstructed and hindered from Voting by those Constables, and that was done *falso & malitiose*, and to his Damage. And this may serve to demonstrate, that the Proceeding at Law has not been in Opposition, but in Conformity to your Judgment.

Now let us consider, whether the bringing of this Action is a Violation of your Privileges: A great many things have been said not proper for you to deliberate upon; one, that this will encourage a Multitude of Suits; another, that this Action was never brought before; and several other Matters which go to the Question, whether the Action will lie. Now that is not the Question here; but the true and only Question before you, is, Whether this Action was brought in Violation of your Privileges; for if there be no Breach of Privilege in it, I know of no Authority we have to stop the Course of legal Proceedings.

And as to that, but one thing (as I conceive,) has been said materially, which is this, That this is a Parliamentary Case, and appertains to your Jurisdiction; and the Judges of the Common Law, are not Judges of the Law of Parliament, and therefore they ought not to have given the Plaintiff his Judgment, (and it must be admitted the Lords ought not to have given any Judgment, but what the Judges ought to have given.) To maintain this, it hath been said, and undoubtedly it is true, that this House hath a Right to judge of Elections; and it is as true, that in order to come to that Determination, it is incidently necessary that the House do judge of the Right of the Electors; and it has been said, (but that I deny,) that the Right of the Electors is by the Law of Parliament.

I take the Right of every Elector in *England* to accrue to him by the Common Law, for he is  
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under one or other of these Qualifications: Either he is a Freeholder, and then he has a Right to vote for Knights of the Shire; or he has a Right by Charter, or a Right by Prescription; which Two last Rights take in the Right of Voting in all Cities and Boroughs. Now I would be glad to know whether the Right of a Freeholder is not by the Common Law? Is it not an Estate, with all its Privileges and Services, created by that Law? Whether a Right by Charter is not by the Common Law? Is it not that Law that enables the Crown to grant Charters, and qualifies that Power? Whether a Right by Prescription is not by the Common Law? Is not Prescription, Common Usage? And is the Common Law, any thing but Common Usage? So that the Right of every Elector being by the Common Law, the Judgment of that Right is primarily and originally in the Courts of Law. The Freeholders Right of Voting, is of the Essence of his Freehold; and you may as well take away his Freehold, as take away his Right to vote, which he has by Virtue of that Freehold, and then tell him he must come to the House of Commons to recover it. And the same may be said of those several Interests which give a Right of voting in Cities and Boroughs. And thus I hope I have made it out, that a Right of voting is not a Parliamentary Right, but an ordinary legal one, and the Common Law. Judges have the Judgment of it originally; and it is incidentally only that the House has a Power of judging of it, and that too according to the Rules of the Common Law; which is a further Demonstration, that it is a Common-Law Right; for it would be absurd to say, a Man has a Right by one Law, which is to be judged by the Rules of another.

Then what Course has the Plaintiff taken? He has a Right by the Common Law to chuse Burgesses for *Aylesbury*: That Right has been invaded, and he has gone to the Common Law for Redress, and from no other Power could he have it; for this House, or the Committee of Elections, cannot give a Remedy in this Case, that is, cannot make the Person injured Reparation for the Damages done him, by obstructing him in the Exercise of his Privilege: And that is the Thing the learned Gentlemen, who have spoke in this Debate, have passed by; and these are the material Points, that this is a Right at Common Law, and this House cannot apply a Remedy.

But it has been said, That the House will examine, not only on Behalf of the elected Person, but of the Electors. 'Tis true, but in order to what? To see whether you have a right Member here, and for no other End; for I challenge any Gentleman to shew me one Instance of a single

Man who came hither and complain'd, That he had a Right to vote, and was hinder'd from voting, and made that solely to be the Offence of the Officer. Did the House, or would the House ever receive such a Complaint? And yet he may go with that Complaint to the Law; for whether the Person he would vote for be return'd or not, the Injury is the hindering him from enjoying his Privilege: And it cannot be made an Injury, or not an Injury by Matter *ex post facto*, that is, by the Officer's returning, or not returning the Candidates. And tho' the Officer should repent him, and not carry his Injustice so far as to make a false Return, yet it is of Use, that the Law will redress the Wrong done to the Voter, and thereby, perhaps, stop the first Steps or Approaches towards a false Return.

But if I should admit the House would receive the single Petition of a Voter, who was refused, and when the Person he would have voted for was return'd, yet the House cannot make him Reparation; all we can do, is to censure the Officer, but we can't make the Person complaining whole, in Point of Damages. Indeed it has been said, the House can give Damages, and there was an Instance given of Mr. *Tankred*, who complain'd against a Clergyman, and the House ordered Mr. *Tankred* to pay him Costs: So was Sir *George Meggot* ordered to pay Costs to the Member he causelessly petition'd against,\* and the like is provided for at the Beginning of every Session. But are these Instances of any Petitioner repair'd in Damages by this House? No, these are Instances against Petitioners, not in Favour of them; nor are Damages given in those Cases, but Costs; all that is provided for, is, that Persons frivolously complain'd against shall not be out of Pocket. And by a Mean you have a Jurisdiction in Point of Expences, but not in Point of Damages, for you may order the Wrongdoer into Custody, and make his Payment of Costs to the injured Person the Price of his Liberty; but there is no direct Remedy, even for Costs.

But it is apprehended, here may be a clashing of Jurisdictions, and if the Party should be allowed to go to Law, the Courts of Law may be of one Opinion, and this House of another. This is a Supposition the Law does not allow of, for this is to suppose Courts of Justice will not do Right. It will be allow'd to me your Determination will always be just, and other Courts the Law supposes will do Right too, and then they will determine as you do; and your Determination, and that of the Law, as I said before, has been the same in this Case. But then, as the Supposition of Law is, that all Courts will do Right, so human Frailty supposes there may be

\* The CASE of Sir *George Meggot*. 23 Nov. 8 *Willielmi R.* A Complaint being made to the House, That Sir *George Meggot* had prosecuted at Law several Persons for what they had testified the last Session at the Committee of Privileges and Elections; upon hearing the Matter touching the Election for the Borough of *Southwark*; it was refer'd to the Committee of Privileges to examine the Matter of the said Complaint, and report their Opinion.

4 Decemb. 8 *Willielmi*. A Report was made of the Matter of Fact, and that the Committee had come to this Resolution, "That Sir *George Meggot* having prosecuted at Law, *Thomas Malyn*, and *John Ladd*, for what they testified at the Committee of Privileges and Elections the last Session, upon hearing of the Matter touching the Election for the Borough of *Southwark*, was Guilty of a Breach of Privilege.

The House then agreed with the Committee, and order'd Sir *George Meggot* to be taken into Custody of the Serjeant at Arms.

The CASE of Mr. *Tankred*. 20 Jan. 9 *Willielmi R.* Mr. *Tankred* complain'd to the House of a Breach of Privilege against Mr. *Edward Morris*, Minister of *Alaborough*, in the County of *York*; for that the said *Morris* had intercepted Letters of Mr. *Tankred's*, which were sent by the Post.

14 Feb. 10 *Willielmi R.* Mr. *Morris* attending, was brought in, and the House having heard him, and his Witnesses, Resolved, "That there was no Ground of Complaint of Breach of Privilege, and order'd that Mr. *Morris* should be discharg'd from any further Attendance, and that he should be paid the Charge of his Attendance by Mr. *Tankred*.



an Error in Judgment: And yet Courts must have Jurisdiction, or else there can be no Administration of Justice among Men, since there is no Judicature short of another World that can pretend to an unerring Judgment:

And now I will show you where several Courts have different Jurisdictions of the same Fact, and the Law allows them, notwithstanding there may be Diversity of Judgments. The Court of *Common Pleas* may punish a Person for assaulting an Officer in the Execution of their Process, as a Contempt to that Court; but at the same Time, for the same Matter, the Offender may be punished in the *King's Bench*, as it is a Breach of the Publick Peace; and the Officer may, if he pleases, bring his Action in the Court of *Exchequer* for the Damage done him.

I would observe a little upon the Cases cited, and that as short as possible. The first is that of *Nevill* and *Strode*; I have look'd into the Journal of 1659, and the only Book of our Law, where that Case is reported, and that is *Siderfin's* second Reports; and that was upon Writs issued out by *Cromwell*, whereby he appointed Counties to chuse differently, some Three, some Four, some Five Members: Mr. *Nevill*, who was a Member of the Long Parliament, stood for one of the Five Knights for the County of *Berks*; they chose him, but he was not return'd, and therefore he brought his Action in the *Common Pleas*: That Action depended there some Time, and thereupon the Justices brought the Record into this House for Difficulty, and desired the House would come to a Determination in it, (and by the way there was no House of Lords in being at that Time; for it was in the Time of the Long Parliament, who had usurped the whole Legislative, as well as the Executive Power) and no wonder the Judges complimented them with the Determination of that Question, since they were their Creatures, and had their Commissions from them. Well, but the Record being brought in, the House appointed a Day to consider of the Matter, and when they saw the Plaintiff had proceeded according to the known Methods of Law, they gave no Judgment in it, but sent it back to *Westminster-Hall*, and there it was again argued, but never adjudged. And that there was no Judgment given, is easy to account for, if the Judges thought such an Action would lie; for at that Time, the Long Parliament was upon the Point of bringing in the King, and restoring the Laws: And if they had given Judgment for the Plaintiff, they had given a Sanction to the highest Usurpation of the Protector, and all his wild Fancies of changing the Constitution at his Will and Pleasure. And indeed the Plaintiff had disaffirm'd the Authority of the Long Parliament, which he had with great Zeal asserted, and of which he was himself a Member. But if the Judges had thought such an Action would not lie, they might, without any Scruple, have given Judgment for the Defendant. And this seems to me a strong Authority that *Westminster-Hall* thought such an Action would lie: And it is very remarkable, that when that House of Commons (as they call'd themselves) had usurp'd the exorbitant Power I mention'd before, they did not proceed to assume the Jurisdiction of the Common Law.

The next Case is that of *Soame* and *Barnardiston*, in which *Westminster-Hall* was divided:

My Lord *Hale* was of one Opinion, and my Lord *North* of another, and there were Six and Six of a Side, and the Matter came by Writ of Error into the House of Lords, and a Gentleman said, 800*l.* was worth contending for. But I am apt to think Sir *Samuel Barnardiston* did not hope to recover one Farthing of the Money, for *Soame* was dead, and I believe without Assets: For in all the Proceedings in the House of Lords, none appear'd on the Behalf of his Widow, she had no Council there; but it was argued against Sir *Samuel Barnardiston*, by Mr. *Mountague*, the late Lord Chief Baron, to vindicate the Proceedings of the Exchequer Chamber, and Judgment was given, as hath been said, in the House of Lords.

But what happened next? The Commons were so uneasy under that Judgment, and the Injury which might be done to the People from whom they derived their Authority, by double, or false Returns, that the next Thing was the Interposition of the Legislature to apply a Remedy, and the Lords came into it, tho' it was a great Discredit to the Reversal of that Judgment; for the Act of the 7th of the late King, declares false Returns to be against Law, and provides an Action shall lie where an Officer makes a Return falsely and maliciously; they never thought it an insinuating Thing, but knew Malice might be try'd in that as well as in many other Cases: And I wonder to hear *falso & malitiose* should be so much Words of Course. Men are try'd for their Lives every Day, where Malice is the main Point in Issue. If a Man does without any Provocation kill another, the Law intends Malice, and that is Murder: So here, if an Officer refuseth the Vote of one, who hath a clear and indisputable Right, the Law presumes it done maliciously; but if the Officer refuses a Man's Vote, and there is any probable Cause, or Colour to do it, or his Right of voting is doubtful, the Judge will tell the Jury they ought to find for the Defendant; and therefore it's only in a plain and glaring Case, that a Man can prevail in such an Action. And this, by the way, is an Answer to that Objection, that such Actions as these will bring all your Elections to be determin'd by the Lords: Since an Officer can never be found guilty by a Jury upon this Action, where there is a Controversy or Dispute, much less can the Lords try, or determine any thing of the Right.

There is another Case, and that is the Case of Mr. *Onslow* against the Bailiff of *Hastmère*; that Judgment was against the Action, and was given by my Lord Chief Justice *North*, and the rest of the Judges of the *Common Pleas*, upon the Authority of the Judgment in the Case of *Soame* and *Barnardiston* in the *Exchequer* Chamber; and no wonder they would not give a Judgment contrary to what some of themselves had given in another Place.

Sir, this Question hath been before this House not long since, Whether a Candidate should be hinder'd from proceeding upon an Action at Law before he had come to this House for their Determination, whether he was chosen or no? And this House, upon a solemn Debate, adjudg'd; that he might go to Law before he had come hither; and I desire your Clerk may read a Word or two in your Journal, 'tis *Monday 13 March, 98.*

Clerk reads. "The House being acquainted, that *John Buller*, Esq; who was Candidate at the Election for Choice of Members to serve  
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" in this present Parliament for the Borough of *Lescard*, in the County of *Cornwal*, hath brought an Action upon the Statute made in the 7th Year of His Majesty's Reign, against *Mr. Richard Roberts*, Mayor of the said Borough, for the Sum of 500*l.* for making a false Return of *William Bridges*, Esq; altho' the said *Mr. Buller* never petition'd against, or question'd the said Return in this House, and a Debate arising thereupon, resolved, that the Debate be adjourn'd 'till *Wednesday Morning* next."

Sir *Joseph Jekyll*. Now I desire you to look upon *Wednesday* the 15th Day of *March*, when that Debate was resumed.

*Clerk reads.* This was the 15th of *March*. " The House resumed the adjourn'd Debate relating to *Mr. Buller*; and after a long Debate, the same fell, without any thing done thereupon."

*Members.* Well, what then?

Sir *Joseph Jekyll*. I take this to be a plain Authority, that will govern the Case before you; for if it was not reasonable to restrain a Man from proceeding at Law upon the Statute, before he had come hither for a Determination, when it was to controvert the very Election, which was undoubtedly proper for the Judicature of the House, much less will it be reasonable to restrain a Proceeding at Law, which is not to controvert the Election, and upon a Case not proper for the Judicature of the House; and the House doing nothing upon that Complaint, is a Declaration, that the House could not justly do any thing upon it: For if a Man makes a Motion in any other Court, and the Court declares they will do nothing upon it, I desire to know whether that be not a Declaration of that Court, That the Motion is unreasonable, and it is all the Judgment the Court gives in such a Case. And I had the Honour to sit in Parliament when that Motion was made, and very much pressed; and some that have spoke in this Debate were then of an Opinion contrary to what they are now, and were not for stopping the Course of Law.

Sir, I apprehend the Action is well founded in this Case; this Man had a Right to vote, he had an Injury done him in respect to that Right, he hath sought to be repair'd in a proper Way, and he could not be repair'd in any other: I am for doing nothing to his Prejudice, and therefore am against your Question.

*Mr. Harley, (Speaker.)* Sir, I shall trouble you but with a few Words after this long Debate: And rather to understand the Terms you are debating on, than to think any Thing I can offer to be of any great Weight. But I take the Question not to be as some have represented it, but to be singly this in general, Whether an Action does lie at Common Law in the Case before you?

There is no need to mention the particular Circumstances of *Aylesbury* Election, for if that was the single Case, you might have taken another Method. I will not insist, that in this very Election a great Number of those Inhabitants petition'd this House upon this Point, That their Votes were deny'd: And after this Petition had lain in the House some Time, it was withdrawn by their own Consent; I do not trouble myself whether this particular Man was amongst them, nor will I trouble you with what may reasonably

be urged from this, but leave that to other Gentlemen.

But I desire we may understand the Terms upon which we are debating; we have had Maxims of the Common Law, and the Rights of Parliament mention'd. The Common Law is the common Usage of the Realm; I take the Laws of Parliament to be the common Law of the Land, and the Usage of Parliament to be the Law of Parliament; and the Law of Parliament is to be known by Usage, as the Common Law is.

Then how shall we know whether this belongs to the Common Law? If there be any other Way, I should be glad to be inform'd; but I think there is no other Way of knowing, whether an Action will lie at Common Law, but by Reason or Usage, and Precedents. Now, if by Reason, it is to be made out by what necessarily attends this Case, or some other Cases like it. And pray what do they offer, that lies at Common Law? Do they give you any Precedent? What Reason do they offer? I suppose that which was read last is no Precedent in this Case, for that was an Action upon the Statute; or that the Courts below take upon them a Legislature instead of a Judicature, which must be, if there be no Rule for them to go by. I take the Question you have read, to consist of Two Parts; one asserting your own Right, the other is negative, That no other Courts have any Right, but in Cases particularly directed by the Statute.

I cannot think this of Electors and Elected a Privilege, I take it to be a Service both in the Electors and Elected; and formerly it was reckon'd an hard Service, I know not how they find it now. 'Tis a Service, I take it, because all who are Electors are liable to pay the Wages, and I take that to be a Burden: And not only from that, but the very Towns that were Boroughs, and elected, when one paid Fifteenths, the other paid Tenths; so that I take it to be a Service: And if a Franchise, see the Consequence, it will be in the Power of the Crown to create as many Boroughs as they please.

Then consider, this House is in Possession of this Power, as of Right; and I do not find the Common Law in Possession of any such Right. Then what do they offer to bring it in, but that there would be some Failure of Justice? Now I took it, That the Judges are *Jus dicere*, and not *Jus dare*: If any thing want a Provision to be made for it, it must be done by the Legislative Power; and if the Electors want it, Provision must be made for them, that they shall have an Action. And those Gentlemen, who think that necessary, may bring in a Bill to that Purpose, and take the Sense of the Legislature upon it in a regular Way.

The Question before you now is, Whether the Examination, Hearing, and Determination of all Matters relating to Elections, where some Statutes have not particularly directed otherwise, does not belong to this House? There was a famous Case of *Goodwin*, that was a Case contested by the Crown, and the Crown pretended to send out another Writ. And there they say, That as to Members of Parliament, their Attendance, &c. they are the sole Judge. And this they lay before King *James* in the first Year of his Reign, and claim it as their sole Right, and the King's second Writ was determin'd to be void.



But a Gentleman makes an Argument, if one should strike another in the House, what Remedy? Why there is an Act made for that Case in Henry VI's Time.

I think now the Matter will turn upon this: Say they, 'tis true you can try Elections, and who are the Electors; but here is one Thing remains, that is, to give Satisfaction. Have they any Precedents for this? I believe the Precedents are without; they have a Power for what is necessary, nothing less than a Law can give the other.

Gentlemen say, there may be a Difference in Judgment in Courts below, but they are subordinate, and there lies an Appeal: But in this Case, all Courts will be co-ordinate with you; and therefore if that be a Grievance, nay a Solecism in Government, prevent it now.

'Tis said, What will your Vote do? That is pretty odd: If they would have an Act of Parliament, your Vote must be the Ground of it.

You are Judges of the whole; but say some, you can't give the pecuniary Satisfaction. Well, suppose so, but you can restore all to their Right. But let me say this, If you would not set up a co-ordinate Power with you in Matters of Elections, and which will be too hard for you at last, I hope it will be a Warning to you, to take more Care in the judging of your Elections for the Time to come.

If the Judgment belongs to you, and you are possess'd of it for so long a Tract of Time, that no body can offer any thing against it since H. IV's Time; 'till Gentlemen shew me some Reason, why the Common Law should lay hold of it, I must be of Opinion, that it does belong to you, and no Court can take Cognizance of it but you, except where 'tis otherwise provided for by Statute.

Sir Thomas Meres. Sir, I shall not enter into a Discourse, and repeat what I remember of former Times. I will say but this, let others answer it better if they can. As to the Words *falso & malitiose*, it seems, one Chief Justice said, They were Words of Importance, and must be prov'd; another Chief Justice said, They were only Words of Course, that is, like Pepper and Vinegar to a Slice of roast Beef; so there is one Chief Justice, that spoke last but one, against another.

As to making Satisfaction, I confess, I like very well what that Gentleman said on the Right Hand. If there was any Precedent for it, I agree it would do very well, that this House could give Damages, and we will make the best of it; but most of these Things have Spite in them, and these Actions are brought with Spite. Now this we can do, we can punish the Officer, and there is Revenge in that, and that is a sweet Bit, and some Satisfaction. What further occurs to me, hath been spoken by other Gentlemen, better than I can do it; and I shall not repeat it, being so late in the Night.

Mr. Cowper, (afterwards Earl Cowper.) I perfectly agree with that honourable and learned Gentleman that spoke last but one in this Debate, in what he laid down as an undoubted Maxim, or Ground-work, for the Opinion he deliver'd, That the Law and Custom of Parliament is Part of the Law of the Land, and as such, ought to be taken Notice of by all Persons. And I think 'tis the exact Standard by which we ought to walk; and the Deduction my poor Judgment is apt to make from that Principle, is

this, That we ought not, out of Zeal to our own Jurisdiction, to go one Step farther than that known Law and Custom of Parliament will warrant us to do.

Now I take it upon this Debate, That this Law and Custom of Parliament doth not give the Subject, who is injur'd by his Vote being denied him, any Satisfaction, or Recompence for that Damage: And am the rather confirm'd in that Opinion, because that very learned and honourable Gentleman, who is particularly knowing in the Laws and Precedents of Parliament, has not pleas'd to represent to you any one Precedent, where the Subject so injur'd hath complain'd to the Parliament, and had Redress in that Particular; but all Petitions have been either from the Candidates, or Electors, complaining of an undue Return. So that it cannot be shew'd, That it hath been the Law and Custom of Parliament to give that Remedy, or Relief in Parliament, which is the subject Matter, or End of Action now in Question.

I go likewise along with him, and every Gentleman that hath spoke it in this Debate, That by the Law and Custom of Parliament, none but your selves can determine who are rightly elected, in order to displace, or place them here; and incident to that End, you have the sole Right of considering the Right of the Electors; I say so far forth, as it is necessarily incident to determine who shall, and who shall not sit here; and no other Court can consider the Right of the Electors, in order to determine the Right of any to sit in this Place, further than you by some Act of Parliament have given them Leave. But this Matter having now been disputed a great while, you have had it fully represented to you, how they came to hold the Scales in this Action in *Westminster-Hall*, not as in a Case where the Right of Election, or the Privileges of this House was the subject Matter of the Question; the Action was brought there only to intitle the injur'd Subject to Damages. And this Matter ought to be consider'd, as it relates to different Ends and Purposes, and upon that it turn'd in the Case of *Soame* and *Barnardiston*. They who thought that Action lay, thought the Courts below might try the Merits of an Election to repair in Damages, not to determine who should be admitted to sit in Parliament.

And I will venture to say, That the Judgment of the House of Lords that confirm'd that Reversal, was in no wise at that Time satisfactory to the Commons of *England*.

But the Act of Parliament that hath been mention'd, was built upon this, that the Reversal of the Judgment between *Barnardiston* and *Soame* was not right, and so that Act was procur'd to set up the Right of the Commons of *England*, that was thought to be invaded by that Reversal, or Judgment, that the Action upon the Case did not lie.

I will go a Step farther, That as you have the sole Power to try the Right of Election, and consider the Right of the Electors, to the End I mention'd, to determine who shall be admitted here; so I grant it hath been the Law and Custom of Parliaments, (how antient I will not inquire,) to punish the Offenders, particularly the Officers and Magistrates presiding at the Election, for doing any Wrong, or Injury in his Office on that Occasion, in order to make him

an Example, or as an Offender against the Publick, and the Constitution of Parliament: So far I grant you have just Right to go, and no body ought to interfere with you.

But now we are carrying the Matter yet further: The Question now is not, Whether we have the sole Right to punish the Officer as a publick Offender? This Action is not brought to that End, nor is there a Word in the Declaration, who was, or was not duly elected, or that the Constitution or Privilege of Parliament was violated. But the Plaintiff only says he had a Right to vote, and that he was injuriously denied it, (whether the right or wrong Member was return'd, he meddles not with it) and he submits it to the Court and the Law, Whether he ought not to have Damages for that Wrong? And the Question now is, Whether that Demand of Damages was not well founded? Or, Whether there is any thing in this contrary to the Law and Constitution of Parliament? Law depending on Custom, certainly consists not in, and is not to be made out, by one Act, but by often reiterated Acts: And that must be very far from being the Law and Custom of Parliament, which is so far from being a frequent Repetition of Acts, or Precedents, that in this Case, there is not one Instance, where an Elector hath brought his Petition, without regard to the Return made, and desired his particular Right to vote might be tried and asserted, he having been obstructed and injur'd in giving his Vote; nor was ever such Elector repair'd in Damages here, nor ever had his particular Right to vote resolv'd, or asserted by any Judgment, or Declaration of this House.

The learned and honourable Person, upon whose Reasoning I am humbly offering my Thoughts, with great Deference, was pleased to instance in the Case of Five Persons in the Town of *Aylesbury*, who exhibited a Petition, and complain'd of an Injury done them at an Election for that Town, at which their Votes were refus'd. And if they complain'd of nothing further, and did not conclude to the Right of the Return, and complain, that they were unduly represented, I admit it had been so far an Instance to his Purpose. But if they had so complain'd only of the Injury done the Petitioners in denying their Votes; yet he is pleased to tell you, this Petition was withdrawn, and by the Consent of the Persons who presented it, and so came to nothing. I suppose this is the single Precedent to prove the Law and Custom of Parliament, because there is no other Instance given. It does not appear upon what Ground or Reasons it was withdrawn; and I having no particular Memory of that Passage, you will pardon me, if I am mistaken in my Conjecture. I believe no Man, that seeks a Remedy, would desist, if he expected to succeed; so I take the most probable Reason ('till another appear) to be, that they were hopeless of doing any Good with it: And one Petition not prosecuted, will hardly shew, that Parliaments use to give Redress in such Cases. Now if that Precedent had been successful, if the Petition had been refer'd to a Committee, if Damages had been given upon the Complaint, and a declarative Vote had pass'd to assert the Petitioners Right, (but I did not observe there were any such Proceedings,) then, indeed, I must admit, that it was one Precedent in Point, and a very material one; and it would have proved, That we had

once held Plea of this Matter, and by Consequence, if we had often done so, that no body else had to do with it. But if that Precedent be defective, and none can shew, that ever any Petition was exhibited by any Elector for a Personal Injury done him in rejecting his Vote, tho' the Person he would have voted for was return'd, this Action may lie for such an Injury done to an Elector, without interfering with any Law, or Usage of Parliament, that hath yet been made evident; and that brings me to another Matter of that honourable Person's Discourse, and I acknowledge he enter'd into it with a great deal of Candour and Fairness.

He was pleased to say, He thought it was admitted in this Debate, That the like Action is not to be found in all the Reports, or Books of Law. I would allow his Objection its due Weight, and admit what I take his Meaning to be, That this Action, in the particular Species of it, may be new, tho' it's old in its Genus, or the principal Materials on which it is built; and I take it, if by the general Rule, or Reason of Law for such an Action it be warranted, this Action (as a Thousand other Actions on the Case may) will lie, tho' in all the Parts 'tis not to be exactly parallel'd; for it is the very Nature of, and imply'd in the Name of an Action upon the Case, that every Man may maintain it on his particular Case, provided it carry in it the general Reason, or Ingredients required by Law to support such an Action, tho', in many Circumstances, it may be perfectly new. I see that honourable Person understands clearly the necessary Incidents of that Action; that is, there are to be *damnum & injuria*, which I take to mean a Damage to the Subject, not arising from a lawful, but which is the Consequence of an unlawful Act. Now, says he, first here is no Damage, because antiently the Attendance was thought a Service and a Burden, and the Right of Electing was a Service too, and in being deprived of a Service, there can be no Damage; and therefore one of the main Ingredients of an Action of the Case is wanting. This is clear Reasoning, and either to be answer'd or submitted to.

It is said, the Right of Electing was a Service; how true, I doubt upon the Reason of the Thing: A Service was often a Part of the Tenure, by which a Man held his Land 'till it came up to the Crown; and the Service was originally created by Grant and Reservation. Now, can any one imagine, that where one holds a small Freehold, any such Tenure was created between him and his immediate Lord originally by Reservation, as that he should vote to send Members to Parliament?

But if it might be consider'd as a Service so created, it will not do the Business of the Argument, unless you consider it also as a Service of Burden, without Advantage or Privilege; for if it be a Privilege too, (tho' in its Creation it might be a Service) then the depriving a Man of it is an Injury. Now no body can think but that the Right to elect a Parliament-Man, which is a distinguishing Character from the Vulgar, and hath its Weight in the Legislature, is a Privilege; and therefore to be deprived of it, is to be deprived, not only of a Service and Burden, but of a very valuable Privilege: And I believe any *Englishman* would think we dealt hardly by him, to deprive him of it, tho' we should tell him,



him, at the same Time, we depriv'd him only of a Service or Burden, and not of a valuable Privilege.

There is another Thing occurs on this Head: We have been so far from thinking the being elected, a Service or Burden only, that in the Nature of a Repeal of those Judgments of *Soame* and *Barnardiston*, by a positive Law we have given the Elected double Damages if he be deprived of that Service. Therefore by our own Notion, and in our own Case, 'tis a Privilege that ought to be recompenced even with double Damages, that is to say, when it concerns our selves. And shall we declare it a mere Service in the Case of our Electors, not to be recompenced even by single Damages, and that after the undoubted Methods of the Common Law have adjudged it their Due? For I do not find any body doubts, whether this Man has proceeded in the legal Method throughout, even in the last Resort. The Lords have not judged the Fact, they are bound as to the Fact by the Verdict, and they are unquestionably the Judges of the Law on a Writ of Error. And therefore, as to what hath been said, That any Fact of an Election might come to be determined before the Lords, it is a great Mistake, for they judge purely of the Law on Writs of Error, as every one knows, that knows any thing of our Constitution. Give me Leave to say, We, upon this Occasion, judge of this Matter only as a Matter of Law, which may affect our Privileges; and tho' we have Authority to consider what is Law, as it relates to, or may intrench upon our Privileges, no body that sits here can think that there lies an Appeal in this Place, or a second Consideration of this Matter after the Lords Judgement, as 'tis a Point of Law only, and as it regards the Right of the Subject. So that an Objection in Point of Law here to the Judgement of the Lords, will not hold otherwise, than as it relates to our own Privileges; for no body will say, That we are the dernier Resort in any other Respect. And tho' that is the only Point that brings it properly under our Consideration, yet I fear we are taking from the Subject, in Effect, what the Law hath adjudged his Right, and reversing a legal Judgment given in the Subject's Favour. There are other Arguments flung in, to make up the Weight only, as that which compares the present to the Case of a Dove-house, in which Case, in Regard of the Multitude of Actions that would follow, an Action will not lie for every one that is injured by the erecting of it. It is true, where a Multitude are injured by one and the same Fact, it shall not be punish'd by a Multitude of Actions; but the Publick is to take Care of it, because the Injury is of a publick Nature. But by the same Standard and known Laws of *England*, if one Man is so rash as to commit a Multitude of Injuries, which severally affect several Persons, it was never said, that he became unpunishable by the Multitude of his Offences, but every one injured has his Action against him. I have heard it said, *defendit Numerus*, but that is spoken as to the Number of Offenders, not the Number of Offences committed by the same Man. And these Injuries which consist in denying the Subject to vote, when of Right he ought, will not be multiply'd (as is objected) by letting the Subject know, That as they may come into Par-

liament to punish the Officer as a publick Offender against the Constitution; so the particular Person injur'd, by being denied his Vote, may also have an Action for the private and particular Injury done to him only.

I would mention one Thing more: They who have spoke for the other Opinion, seem to take it for granted, (which I do not take to be a true Way of Reasoning) that because in determining who have a Right to sit here, we do incidently, and only can, in order to that End, determine who have a Right to vote, therefore no other Judicature can try the same Matter or Right to vote, tho' it be to different Ends and Purposes.

Now if you will consider the different Jurisdictions in the Constitution of this Kingdom, there is nothing more common, and many Instances may be given of it. There are Variety of Jurisdictions that try the same Fact, and yet each hath a sole and separate Jurisdiction in that Matter, to different Ends; and these Jurisdictions are not, in that Respect, subordinate to one another: Take the Spiritual and Temporal; the Spiritual is not subordinate, but only restrainable by the Temporal, where they intrench upon the Temporal; as in the common Instance of Matrimony, which directly and abstracted from other Purposes, is triable in the Spiritual Court, and no where else: But yet if that comes to be a Question of Fact in relation to a Title at Law, or to make out a Descent, why the Temporal Courts every Day try it, though *per se*, and taken by itself, it belongs to the Jurisdiction of the Spiritual Court; and yet these Courts are not in that respect subordinate one to another.

So in the Case touched upon of a Battery, 'tis not triable in the Common Pleas, as 'tis an Offence against the publick Peace, by Indictment, in order to a Fine, but triable in those Courts only that have a Criminal Jurisdiction; but as 'tis a private Injury, and in order to recompence the injur'd in Damages, that is triable in the Court of Common Pleas, and other Places, which have Cognizance of Civil Actions only: And this is not in respect that one Court is subordinate to the other, but one holds Plea of the same Fact, in order to one End; and the other, in order to another End: And there is no clashing of Jurisdictions in such Cases.

For what hath been objected, That this may create Variety of Judgments concerning the same Right: This does not weigh, it seems, in our own Cases, for we may bring our Actions for double Damages, for a false Return, and yet that may produce the same Variety of Judgements. So was the Opinion of the House in the Case behind me cited; and the Law is plain, That tho' the last Determination of this House, where there hath been any, shall determine the Right of Election, and there the Judges and Jury shall be bound by the last Determination, and to act by the same Rule; yet in Towns where there has been no Dispute of the Right settled here one Way or other, the Candidate may notwithstanding bring his Action, and he, or the People of the Place, may also petition the House of Commons. And then there is the same Objection, for there may be Variety of Judgments touching the Right of Election, one in the House of Commons, and another in the Courts below. And upon the Trial,



Trial, in order to obtain Damages, a Jury, in such Cases, where the Right had never been settled in Parliament before the Election in Question, are not directed by the Judgment of your House on the same disputed Election, nor is any Jury bound to follow such Judgment. And if you will go upon a Supposition, that a Judge and Jury may go contrary to Law and Right, or the Determinations of this House in the Case before you, 'tis an Objection which you have over-look'd in your own Cases; and therefore why should it be an Objection to hinder the Person whom you represent, of his Remedy for the Injury done him?

Upon the Whole, I am for so much of your Question as serves only to declare, That you have the sole Power of determining the Right of all Elections, and even the Electors Right to Vote, to the end to try who is your Member, or to punish the Officer, as an Offender against the Constitution: So far is agreeable to the constant Law and Practice of Parliament. But for that Part of the Question which relates to the restraining the Electors from bringing their Actions for the Personal, or private Damage done to them, I think it is not agreeable to the Law, or Constitution of Parliament.

Sir Humphrey Mackworth. Mr. Freeman, we are much oblig'd to the Gentlemen that have argued on both Sides, who have brought the Matter of this Debate into a narrow Compass: The Question is this, "Whether an Elector be intitled to an Action at Common Law against the Officer, for Recovery of Damages, in Case his Vote which he offer'd, be not taken down in Writing, and entered on the Poll?" or, Whether the House of Commons have the sole Privilege of examining and determining the Right, or Qualification of every Elector to give his Vote, and to judge of the Behaviour of every Sheriff, and other Officer, in taking the Poll on the Election of Members to serve in Parliament?

I am of Opinion, with great Submission to better Judgments, that the House of Commons have a sole Right of Judicature in these Cases, and that the Elector is not intitled to an Action at Common Law. I shall endeavour to support this Opinion, by answering the Arguments that have been made use of to prove the contrary: And first, I crave Leave to observe, that the Gentlemen who have argued on the other Side, have not taken Notice of a Distinction which seems to be very material in this Case, and that is, between an actual Force, or Violence done by the Officer, and a bare Omission in Point of Duty. It is agreed, that in Case the Officer does by Force, or Violence, obstruct, or hinder an Elector from offering, or pronouncing his Vote at an Election for which of the Candidates he pleases, the Elector will be intitled to an Action at Common Law for Recovery of Damages, for that is a Personal Wrong, and does not concern the Right or Qualification of an Elector to Vote in Elections: But in Case the Officer does permit the Elector quietly to offer, or pronounce his Vote, (as he did in the Case of *Ashby*, who pronounced his Vote for Sir *Thomas Lee*, and *Simon Mayne*, Esq;) but does not think fit to enter his Vote upon the Poll, the Elector in this Case is not intitled to an Action at Common Law for Recovery of

Damages, because he has neither suffered any Force or Violence, nor is by such Omission deprived of his Vote: For a Vote being once pronounced, the Law takes it for the Benefit of the Publick, tho' the Officer be wanting in his Duty; and none have Power to determine, whether the Elector had a legal Vote, and whether the Officer had sufficient Reason to refuse to enter the said Vote on the Poll, but the House of Commons. If any others should have Authority in this Case, they will be able to destroy the Freedom of Elections, and the Constitution of Parliament.

It is insisted by some Gentlemen, that the Electors have no proper Remedy in this Case in the House of Commons, and therefore they must have their Remedy at Common Law: But with great Deference to their Judgments, the Electors have a very proper Remedy in this House in every respect; for here their Votes will be allowed, the legal Representatives restored, and the Officer will be punished for any wilful Default in the Execution of his Office. This is a Remedy that answers the End for which every Elector is intitled to give his Vote, which is not for a private Advantage to himself, but for the general Advantage of the whole Kingdom. But the Action at Law is no proper Remedy in any respect: For since a Vote that is offered and refused, is as good by the Law of Parliament as a Vote that is offered and received, and is so adjudged on the Trial of every Election in the House of Commons, or else they could not fill their House with legal Representatives; it is not proper or reasonable that an Officer should pay Damages to an Elector that has not suffered any, nor that a publick Offence should be punished by a private Satisfaction; which is not likely to prevent the Evil, preserve the Vote, and restore the Representative; nor is the same consistent with the Constitution, or the publick Safety.

The Qualification of Electors, and the Behaviour of Officers in all Elections, are Matters of Parliament, and such Matters are not cognizable elsewhere, as hath been often declared by all the Judges of *England*: A Parliamentary Case requires a Parliamentary Remedy. And since Votes have been refused in all Elections; if Electors, in this Case, had been intitled to an Action at Law, it must be presumed, that some Time or other, such an Action would have been brought, which yet was never once attempted in any former Reign; and all those Acts of Parliament that were made to give Damages in Cases relating to Elections, do demonstrate that no such Damages could be recovered at Common Law; for if they could, there had been no Occasion for making any of those Statutes.

It is insisted, That every Right must have a Remedy; but then the Subject must be first deprived of that Right, which in this Case he was not; and even when he is, he must have his Remedy in a proper Manner, and in a proper Court. There are several Sorts of Rights, and several Sorts of Laws in *England*, and there are several Courts of Justice, for the Administration of those Laws: A Man that has a Right to a Legacy, cannot bring an Action at Common Law, but he has a proper Remedy in the Spiritual Court. The like may be observed of Cases that belong to the Courts of Chancery, Admiralty, Stanneries,



ries, and of the Forest Laws. The Subject cannot bring Actions at Common Law, in Cases that belong to the Jurisdiction of other Courts. And when my Lord Chief-Justice *Coke* enumerates the several Laws in this Kingdom, he gives the Precedence to the Law and Custom of Parliament, which, he tells us, is superior to the Common Law in *Westminster-Hall*. And as every Court at Law has its Customs and Privileges peculiar to itself, and is sole Judge of them, so also the High Court of Parliament, *suis propriis legibus & consuetudinibus subsistit*, hath its own proper Laws and Customs, and is sole Judge thereof. And if an Action at Common Law will not lie for a Legacy, where the Spiritual Court has a Jurisdiction, tho' the Temporal Courts have, in many Respects, a superior Authority; such an Action will much less lie in a Case concerning the Parliament, which is the highest Court of the Kingdom, and who are sole Judges of all Cases relating to themselves. But some carry this further, and say, that every Right must have a Remedy with Damages. This may be true in most Cases, where a Man is deprived of Rights of Property and Possession; but there are many Instances to be given, where a Right of Franchise or Privilege is not intitled to any Damage; as a Person elected Mayor of a Corporation, if the proper Officer refuses to swear him, has no Action at Law for Damages, but his Remedy is by a *Mandamus* out of the *Queen's-Bench*: There is a Remedy by *Quare impedit*, but not to recover Damages. In a Writ of Right, you shall recover the Land, but no Damages: So in this Case, the proper Remedy is to have the Vote allowed, which can only be done by the House of Commons. Some Gentlemen have found out a new Distinction, which I never heard before, that the House of Commons have the sole Privilege to judge of the Rights of Electors, and of the Behaviour of Officers, to one Intent, but not to another; that is, in order to determine who are the legal Representatives, but not to give Damages to the Party injured. But, with great Submission, there is no Weight at all in this Distinction: For, as it is plain, that the Elector is not, in this Case, deprived of his Vote, and therefore suffers no Damage; so it is also evident, that the Judgment of the House of Commons in Matters properly cognizable before them, cannot be contradicted by any other Judicature; and therefore their Judgment of the Qualification of the Elector, and of the Behaviour of the Officer, must be conclusive to all Intents and Purposes whatsoever. It is contrary to the Reason of all Laws, that the Behaviour of an Officer should be subject to the Determination of two independent Jurisdictions: Or that he should be innocent by the Judgment of a superior Court, and guilty by the Judgment of an inferior: Or that he should be twice punished for the same Offence. No Man can serve two Masters: The Officer, at this Rate, will be every way ensnared, and made liable to Punishment, whether he does his Duty or not: If he accepts illegal Votes on the Poll, he will forfeit 500*l.* by the Statute, for a false Return; if he refuses them, he may be ruin'd by a Multitude of Actions; for if one may bring an Action, there may five Hundred, since every Man, at this Rate, may offer a Vote, and bring an Action for not entering it upon the Poll. How is this consistent with the Freedom of Elections,

in which there ought to be no Terror, neither on the Electors, nor on the Officers? But as the Electors should be free to offer their Votes, so the Officers should be free to judge whether they ought to be entered on the Poll, or not; and they ought not to be accountable to any, but the House of Commons, whose Servants they are, in all Matters relating to Elections, and who are entrusted with the Determination of all Matters and Cases relating thereto; and they may as well punish them for taking illegal Votes on the Poll, as for not taking those that are legal. In neither of which Cases have the Judges of the Common Law any Jurisdiction, tho' there is the same Reason in both, to take Care that every the meanest Subject may have Relief for any Injury done him; but we are not to take more Care of the meanest Subject than of the whole House of Commons. The greatest Subject in *England* ought to have no Relief but what is consistent with the Law of Parliament, and the Safety of the Constitution. If an Action lies, and upon a Judgment on that Action a Writ of Error lies in the House of Peers, the Lords will be the sole Judges at last, who have Votes to chuse a House of Commons; which is directly contrary to the fundamental Maxim of the Law and Custom of Parliament, that the two Houses are mutual Checks to each other, and sole Judges of their own Privileges.

This is an excellent Constitution, and admirably well contrived for the common Safety: But how can this Constitution be preserved, if the Lords can punish our Officers, and govern our Elections? This will be the Way to destroy all Checks, and to make the House of Commons dependent on the Lords; and then I cannot see upon what Foundation you can be said to Sit here to do any Service for your Country.

Others insist, That this is a Right that is incident to the Freehold and Freedom of Electors; therefore, as their Freeholds are cognizable at Common Law, so is every Incident belonging to it. This Argument is plausible at first Sight, but, in Reality, there is nothing in it: For tho' the Commons of *England* have submitted their private Differences to Arbitrators, or Judges, indifferently chosen and appointed by the Prince, the common Parent of the People; yet they have never submitted their fundamental Rights and Privileges, which they hold in their publick and politick Capacities, as a free Branch of the High Court of Parliament, to any other but their own Representatives, who are chosen and appointed by themselves. This is not a Case, properly speaking, between Party and Party, but between the Lords and Commons, because the Determination of this Case brings the whole Right in Question, Who have a Privilege to judge of the Qualification of Electors to give their Votes in Election of Members to serve in Parliament, Whether the Lords or the Commons? It is not now the Question, Who hath the best Right to a Freehold, or Freedom, or to any thing that is incident to it? But, Whether the Commons of *England* shall have any Freeholds, or Freedoms at all? Or, which is the same Thing in Effect, Whether they shall have any Security for those Rights or not? For if the Lords are Judges of your Privileges, you can hold no Right but during their Pleasure.



The Lords seem to contend for the Right of the Subject, but I wish it is not for a Power to enable themselves to judge and determine as they think fit of all our Rights and Liberties; for this is the necessary Consequence of allowing an Elector to have a Remedy in any other Place but within these Walls.

This is my humble Opinion; and if I am mistaken, other Gentlemen will set me right. This is certainly a Matter of the highest Importance to the Welfare of the Subject, and I doubt not but they will very well consider it, before they give way to the establishing a Precedent that tends to destroy the Privileges of this House, or the Liberties of their Country.

A great Tenderneſs is expreſs'd for this poor Man, whose Vote has been refus'd; but whether he had a Right to give his Vote, is very much questioned, and never yet determined by this House, which has the proper Judicature thereof. But admitting he had a Vote, Whether ought to be preferr'd, a private Interest, or the publick Safety? Whether will be most for the Honour of this House, and the Interest of our Electors, The Care of a private Person by new-invented Action, neither warranted by Reason, Precedent, or any establish'd Law; or the Care of the Parliament, and the Constitution, on which depend the Rights and Liberties of all the Commons of England?

Sir, I beg Pardon for taking up so much of your Time, but I must confess, it seems to me, that our *All* depends upon a right Determination of this Matter; for I cannot see any other Reason why this new Device is supported by the Lords, but only to render you precarious and useless.

Sir *Gilbert Dolben*, (afterwards a Judge in Ireland.) Mr. *Freeman*, I shall not trouble you very long at this time of Day: I think the Point in Debate has been truly stated by the Gentlemen who have insisted on this Question, "Whether an Action will lie for an Elector, for having been refus'd his Vote at the Election of a Member to serve in Parliament?" A learned Gentleman would have the Question to be, not "Whether an Action will lie; but, Whether this House has the sole Right of determining that Matter; and of giving Remedy in it?" I confess I think it is more properly stated the other way: But the thing is scarce worth a Dispute, since which way soever you turn the Tables, it comes to the same Point, and one of the Questions will in Consequence be resolv'd by the Resolution of the other: For if that Question be put which is propos'd by the Gentleman, and carried in the Affirmative, That this House has the sole Right of determining this, and all other Matters whatsoever that concern the Right of Election; then it must follow, that whoever is wrong'd in any such respect, cannot be redress'd by Action, since the Right of determining in Cases of this Nature, is not in the Courts below, but solely in this House.

I shall not offer you any Arguments to prove this sole Right, many having been urg'd by others; but I will consider some Things (without taking up much of your Time,) that have been offer'd as Objections to it.

Some Gentlemen have made a Distinction in this Case, between the Right of the Electors, and of the Elect'd; and they will have it,

That the Courts below may decide the first, but not the last: Whereas, in my poor Opinion, the Decision of the Electors Right must necessarily in many Cases decide who has Right to be elected. For suppose a common Case; That one of the Candidates insists upon an Election by a select Number, and the other upon a popular Election: If in this Case one of the Populace be refus'd his Vote, upon a Pretence that he is not of the select Number, whereupon he brings his Action against the Officer; will not the Event of that Trial determine (in Consequence,) the Right of the Candidates? Surely it must; since if it go for the Plaintiff, he for whom the Plaintiff offer'd to Vote, and who had the popular Interest, will appear to have had the Right of Election; and so will the other Candidate, if it go for the Defendant. Several other Cases to the same Purpose might be put: So that if an Action of this Nature should lie, it must (as I apprehend,) unavoidably follow, That *Westminster-Hall* by original Action, and by Writ of Error the House of Lords, will have Power to determine, (at least consequentially,) who has Right to Sit in this House, and who not. And how consistent such a Determination will be with your undeniable Right, (acknowledg'd on all Sides,) of determining the Elections of your Members, exclusive of all other Jurisdictions, I leave to Gentlemen to consider.

A learned Person was pleas'd to object, That Right is founded upon Usage; and if this House had the sole Right of judging in a Case of this Nature, where a single Elector is wrong'd, doubtless there would be some Precedent of Relief given to such an injur'd Person. But (says the Gentleman,) there is no such Precedent, and therefore it must follow, That this House has not the sole Right of relieving in that Case. I think I may safely deny his first Proposition; as he applies it to the Rights of this House, which (generally speaking,) are not founded upon Usage. Sir, the Rights of Parliament are chiefly founded upon the Nature and Constitution of Parliaments. Usage is indeed a Corroboration, and an Evidence of those Rights; but the Foundation of them, is our being a Part of the Legislature, whereby we necessarily become invested with such Rights and Privileges, as enable us to act, and to discharge our Duty in that great Capacity: So that it is not so much what has been us'd, as what is necessary to the Support of our Constitution, that must be the Rule and Measure in determining the Rights of the House of Commons.

But neither has Usage been wanting in this Case: For whereas the Gentleman asserts, That there is no Precedent where this House has given Relief to a wrong'd Elector, (with Submission,) several such Precedents appear upon your Books, particularly in the Case of *Banbury*, where four or five of the Inhabitants complain'd, and the House gave a Remedy. And I cannot see why, if it has been given to four, it may not be given to one; nay, I should think, if more than one have been reliev'd, *a fortiori* one should be relievable.

But it seems to me, that the Argument drawn from Usage, goes much further than the learned Gentleman intended it should; for if all Right be founded upon Usage, all Right of Action must



must be so founded; and then what becomes of this Action which the Gentleman has laboured to support? If Usage be nothing else but the Repetition of the like Acts, then this Action (according to the Gentleman's Rule, that Usage is the Foundation of Right,) cannot be rightful, unless there hath been a Repetition of the like Action.

Nor can it be said, that this is the first Time any such Cause of Action has arisen, and that therefore it could not have been brought before; for there has scarce been a Parliament call'd in any Reign, but some or other has, without doubt, been wrongfully refus'd his Vote: So that the Cause having been frequent, it must have had the like Effect e'er now, in Case such a Wrong could have been redress'd by bringing such an Action.

But no Gentleman has pretended to say, That any Action of this Nature was ever brought before; and therefore we may infer from the learned Gentleman's own Position, as likewise from the Authority of *Littleton's* Text, That since none has been brought, none can be brought. And this has been the constant Opinion of the Courts in *Westminster-Hall*, the Judges having, upon every Occasion, where the Rights of Parliament have fallen under their Consideration, in all Times declared, That nothing of that Kind is within their Jurisdiction: Nor can they judge of any such Matter, farther than as they are empower'd by particular Statutes.

And this was the Reason why the Judgment in *Barnardiston's* Case, given in the *King's-Bench*, was revers'd in the Exchequer-Chamber, because it was a Thing purely of Parliamentary Cognizance, the House of Commons having the sole Power of determining all Matters relating to Elections and Returns, except in Statute-Cases. Nay, the Court of *King's-Bench* had declared, They would not have proceeded in that Action of *Barnardiston*, had it not been grounded upon a precedent Judgment given in the House of Commons. But the Judges in the Exchequer-Chamber thought, that even the Determination of the House was not a sufficient Authority to the Courts below, to hold Plea in an Action relating to the Rights of Parliament, tho' the Action was grounded upon that Determination; and therefore they revers'd the Judgment given in that Action: And (which is a mighty strong Circumstance in the Case) that Reversal was afterwards affirm'd in the House of Lords. So that it is plain, even the Lords themselves were, at that Time, of the same Opinion with the Judges, That nothing which concern'd Elections was cognizable in *Westminster-Hall*: For otherwise they could not have affirm'd the Judgment given in the Exchequer-Chamber, which was grounded intirely upon that Maxim.

This appears farther, by what their Lordships did in the Case of *Hollis and Elliot*, against whom Judgment had been given in the *King's-Bench*, for what they had said and done in this House. In the Year 1667, the House of Commons voted, That the Judgment given in the *King's-Bench* against those Persons was illegal, as being against the Privilege of Parliament. And this Vote was (as I remember) deliver'd to the Lords at a Conference, with a Desire of their Concurrence to it: Accordingly, the Lords sent a Message, That they did concur. Nay, they were so zealous, as to desire the Lord *Hollis* to bring a

Writ of Error upon that Judgment, which was done, and the Judgment was revers'd. From whence it must be infer'd, that their Lordships were then of Opinion, that whatever Judgment is against the Privilege of Parliament (that is, of either House of Parliament,) is an illegal Judgment.

Now to lay these two Opinions of the Lords together: If the House of Commons has the sole Privilege of judging all Matters relating to Elections, (upon which Ground their Lordships affirm'd the Reversal of the Judgment in *Barnardiston's* Case) and if every Judgment given against the Privilege of Parliament be illegal (as their Lordships both resolv'd, and judg'd in the Case of *Hollis and Elliot*), how comes it to pass, that the Lords have lately thought fit to reverse the Judgment given in this Case of *Ashby and White*, which was grounded upon that very Opinion, establish'd by their Lordships in the Case of *Barnardiston*, That all Matters concerning Elections, are determinable only in the House of Commons? And consequently, how can we avoid saying, (pursuant to the other Opinion, and to the Judgment they gave in the Case of *Hollis*), That their Lordships Judgment of Reversal given upon the Writ of Error in *Ashby's* Case, being against what themselves have own'd to be the Privilege of the House of Commons, is an erroneous (not to say an illegal) Judgment?

I confess I cannot much wonder at its being so, when I consider, that the Steps their Lordships made in proceeding to this Judgment of Reversal, were so very hasty, as not to afford them sufficient Time to weigh and to deliberate upon a Matter of such Importance. This Cause had depended near a Twelvemonth in the *King's-Bench*, it had been argued several Times at the Bar, and at length *seriatim* by the Justices, Three of whom, upon the Reason of former Resolutions, gave Judgment against the Plaintiff, that the Action does not lie: And yet no sooner was this Writ of Error brought, but the Errors are immediately argued; and upon the first Argument, the Opinion of the Judges are required; and notwithstanding they desired Time but 'till the next Day to consider of the Case, the Lords (as I am very well assured,) would not allow them an Hour, but obliged them to deliver their present Thoughts, which tho' several of them expressed very doubtfully, and several others were for affirming the Judgment; yet their Lordships were so very clear, and so determinate in the Point, that, without any farther Consideration, the Judgment was revers'd.

And now I desire Gentlemen to judge, whether in this Instance the Lords have shewn that Regard either to the Privileges, or to the Dignity of this House, which their Ancestors, and themselves, had formerly express'd upon the Occasions before mention'd.

I will take Notice but of one Thing more, which fell from a learned Gentleman, who insist'd, that the Election to Parliament is not a Service, but a Privilege, because double Damages are given by the late Act concerning Returns. I have cast my Eye upon that Act, and I think, if the Preamble be read, it will appear, that Gentleman was somewhat unfortunate in appealing to it; for the Preamble calls the Election to Parliament, a Service, in express Terms, and certainly with good Reason. If the House will give me Leave, I'll read it.

“Whereas



"Whereas false and double Returns of Members to serve in Parliament are an Abuse of Trust in a Matter of the greatest Consequence to the Kingdom, and not only an Injury to the Persons duly chosen, by keeping them from their Service in the House of Commons, and putting them to great Expence to make their Elections appear, but also to the Counties, Cities, Boroughs, and Cinque-Ports by which they are chosen, and the Business of Parliament disturb'd and delay'd thereby; Be it therefore enacted."

Sir, not to trouble you any longer, I am entirely for the Question, as it is stated.

Mr. King. (afterwards Lord King, and Lord Chancellor.) That which calls me up, in the first Place, is what that honourable Gentleman, just against me, was pleas'd to intimate, as if the Right of Electing was only a Service, and not a Liberty, or Privilege; and I find a worthy Member, that spoke last, is of the same Opinion. Truly, I am loth to tell you my own, without desiring the Act 25 Car. II. 9 cap. may be read.—

Members. No, no.

Mr. King. 'Tis an Act to enable the County Palatine of Durham to send Members to Parliament, and it recites, That they had not, before that Time, had the Liberty and Privilege of electing and sending any Members to Parliament: Where you see the Legislature call it a Liberty and Privilege; and if the Legislature call it so, I think I may venture to call it so too. And if it be a Liberty and Privilege, then the Question will be, Whether it does not stand on the same Bottom with our Liberties and Privileges? In Case of any other Franchise or Liberty, an Action lies at Common Law for the Breach thereof; and why an Action should not lie at Common Law for the Breach of this Franchise, as well as for the Breach of every other Franchise, is, to me, very strange. Gentlemen take it for granted, this is purely an Action at Common Law, and no Statute hath any Influence on it. Now there is a Statute which hath not been mention'd, (only I must first premise that which, I think, no body will deny, viz. That wherever an Act of Parliament does forbid any Thing, if any body be injured by the doing of the Thing so prohibited by that Act, in Consequence of Law, the Person injur'd hath an Action,) I say, there is a Statute that forbids Disturbances or Hindrances in Matters of Elections; and by Consequence of Law, that Statute gives an Action to the Party injur'd, against the Person disturbing or hindering him in his Election. The Statute I mean, is the 3 E. I. 5 cap. that is a positive Law whereby all Disturbances in Elections are forbid: Every Man is forbid to hinder or disturb by Force or Arms, by Malice, or menacing any Man, to make a free Election.

I shall only instance in one parallel Case, tho' I could in many more: The Statute in Ricb. II's Time, *de Scandalis Magnatum*, only forbids the speaking Evil of great Men; there is not one Word of an Action, yet, by Operation of Law, it was always held, that an Action would lie upon that Statute for a Scandal of a great Man, because it was prohibited by that Statute. So here, the Statute forbids the disturbing of any Man by Force or Malice to make free Election; the Jury have found, that the Defendants did, in

this Cause, maliciously disturb and hinder the Plaintiff from voting at the Election; and by a like Consequence and Operation of Law, this Action is maintainable.

Gentlemen say, this is a new Action never heard of before: It is true, this particular Action was never brought before, but Actions of the same Kind and Nature, and grounded on the same Principles and Reasons of Law, have been brought before. *Et ubi eadem est ratio idem jus.* I could give you many Instances of this Kind. Was it ever heard, 'till the 20th or 21st Car. II. that an Action lay against an Officer for denying a Poll to one who stood Candidate for a Bridgemaister? The Mayor denied the Poll, and said, he was Judge of the Election: And upon this, the Person injured brought his Action, and recover'd. At the same Time it was said, there was no such Action ever heard of before; 'tis true, not that Species, but the Genus was heard of. Another Action was brought 30 Car. II. (which was never heard of before) against a Mayor, for refusing the Plaintiff's Vote for a succeeding Mayor.

I believe every body knows, that all the Law-Books for 400 Years, say, That the Reversioner had Liberty to go into an Estate of a Tenant for Life, to see if he commit Waste. And no Action was ever brought 'till 16 Ja. 1. by a Reversioner against a Tenant for Life, for refusing to let him in to see whether Waste was committed. No Action was ever brought against a Master of a Ship for the negligent Keeping and Loss of Goods on board his Ship, 'till about the 24 Car. II. and yet the Action lay.

There was another Action in K. Car. I's Time, brought for a false and malicious Prosecution of an Indictment of a Man for Treason. There was the same Objection; and it was said, That this would deter People from prosecuting. And no body ever dreamt of it before, 'tis true, but it stood upon the general Reason of the Law; if you do me a Wrong, I must have a Remedy. And as to what a worthy Gentleman hath said, That there are Instances at Common Law, where a Man shall recover, and yet have no Damages; 'tis true in real Actions, but let him give me an Instance of that in an Action of the Case. He recovers nothing there; if he does not recover Damages in real Actions, he recovers the Land itself.

Members. The Question, the Question.

Mr. King. I find Gentlemen are very uneasy, I will trouble you no further.

Members. Go on, go on.

Mr. King. I agree, the determining the Right of Election belongs to the House of Commons; and they ought to apply to the House of Commons in that Case: And I shall not depart from that, I think I can't, without ruining the Constitution; but that which I say is, That this Action does not at all relate to the Right of Election. This Action is brought by a Man that hath an undoubted Right of voting, against an Officer for maliciously refusing his Vote. Put the Case this had happen'd in a County, (for the Law would have been the same) that a Freeholder, who had a Right to vote, had tendered his Vote to the Sheriff; and tho' he knew he was a Freeholder, yet the Sheriff should maliciously refuse his Vote: Hath the Sheriff done this Man an Injury, or no? This Man does not bring his Action, because



the Person he would have voted for is not return'd, but 'tis because there is an Injury done to his Franchise. If I thought the Right of Election was concern'd in this Case, I would go as far as any, for I think that does belong to the House; but I don't think this is concern'd in the present Case.

*Sir Thomas Littleton.* I shall be shorter than some imagine. It has been discoursed, Whether this be a Privilege, or a Burden, &c. Let them think it a Burden that call it so: If it be a Burden, 'tis such a Burden as some Men spend a great Part of their Estate for, as if it was a Privilege. I think this Resolution which is propos'd, tends to the encouraging one Man to injure another Man's Franchise without any Reparation, which I believe is not very consistent with Law, or Reason. You have, no doubt, a Power of punishing the Offenders, but you can't give Damages: I think this is a plain Case; here was a Man who had a Right to vote, and was not admitted.——

*Members.* No, no.

*Sir Thomas Littleton.* That is admitted upon the Judgment: For the Case is made upon the Right; and if he had not prov'd his Right, he could not have recover'd. Then if he was denied his Right, no body will say, We can give him Damages. What would you have a poor Man do, come with a Petition, and see Council, and attend the Parliament for a Month together? The Man it seems thought it better to go this way. I think, if he had complain'd, we might have punish'd the Officer, but for Damages he could have them no way but this.

Suppose the Judges in *Westminster-Hall* had been of Opinion, That this Action did lie, and the Constables had brought a Writ of Error; What would you have said in a Case where a Man had been denied his Privilege of Voting, and the Law had given Damages, if the Lords had said No, there shall be no Action? I think the Lords have done what is right, I think they have reliev'd the Person injur'd according to Justice; and it does not interfere with your Rights, for he founds his Action upon your Determination.

*Members.* No, no.

*Mr. Walpole.* *Mr. Freeman*, I desire to have the Question read.

Accordingly *Mr. Freeman* in the Chair read the Question again.

*Mr. Serjeant Hooper.* A Gentleman that spoke last but one, was pleas'd to say, That if he thought the Right of electing Members was any ways concern'd in this Question, he would come heartily into it: I know not what that Gentleman means by it, but believe all future Elections will depend much upon the Determination you make now. If you give the Lords this Jurisdiction to take Cognizance of Matters relating to Elections, we must come to them to know whether we have a Right to Sit here. One Gentleman said, he could not tell whether the Sitting here was a Burden, or a Privilege: I believe it is a Privilege to some, who by Sitting here obtain a good Place; but I think as to others, it may be looked upon as a great Burden, for to come up and spend a great deal of Money for the Publick Service; and all the Privilege that I know they have, is, to protect their Estates, and serve their Country.

There is no extravagant Thing but may be brought into the House of Lords, if you countenance them in the Jurisdiction they have now taken upon them. Any Action whatsoever, let it belong to any Temporal Jurisdiction, may be there determin'd. I will still suppose, notwithstanding what is objected against the Judges, they will do their Duty; but *Westminster-Hall* is now no Barrier; for whatever is there determin'd, may be brought by Writ of Error into the House of Lords, and they will determine it as they think fit. In the Case of *Soame* and *Barnardiston*, the Law was taken to be, that *Westminster-Hall* had not a Right to intermeddle in these Matters. What then hath since altered the Law, unless the Lords have the Legislative Power in them? And that I dare say they will have, if you allow them this.

This I must take Notice of from the Report now before you, that here is a Step made, which if it had been made in another Jurisdiction, I should have given a hard Name to it.

I think, in the first Place, the Party should be brought in by the Queen's Process. When Errors are to be assign'd, there uses to go out a *Scire Facias*, which is the Queen's Writ; but here is only an Order made, and for what? That the Party shall join Issue upon the Writ of Error. Suppose there had been a Release of Errors, must he have join'd Issue upon the Errors? And yet it is here so ordered before the Party is heard. I say, if they have a Jurisdiction, the Party ought to be called in by *Scire Facias*: And no Judge, or Judicature, can grant Execution, or Process, but it must be in the Queen's Name. As for your Question, I come heartily into it.

*Sir William Strickland.* *Mr. Freeman*, I think this Question depends upon two Parts, and I believe it the best way to divide your Question. One Part of it concerns the Rights and Liberties of this House, and I think every body will come up to it: And as I would not lessen the Privileges that belong to the House of Commons, so I would not lessen any Privilege of the Commons of *England*, whom we here represent. As one are the Privileges of this House, so the other concerns the Liberties of the People of *England*, who cannot otherwise come to a Remedy when they are abused in this Manner. The Gentleman that called it a hard Service, if he would tell his Country so, I believe he might be excus'd, and they would send another in his Room.

*Mr. Walpole*, (afterwards *Sir Robert*, and Chancellor of the *Exchequer*, and afterwards Earl of *Oxford*.) I will trouble you very little at this Time: I think the Point of Learning and Law hath been so well spoken to by those learned Gentlemen that have been against the Question, that if I was able, I should say nothing more to that. But I think the Question, as 'tis going to be put, is not right; for as the Question stands, tho' I cannot give my Negative to one Part, I think 'tis impossible to give my Affirmative to the other. The Matter before you comes to this single Question, Whether you will encourage, and give a Power to an Officer, be he whom he will, to act arbitrarily, or rather chuse in such a Case, to do something in Favour of the Electors? I am sure, if I desire to be elected by those that had the Right, I would never give the Officer an Authority to the Prejudice



of the Electors. Where you come to say, that the sole judging of the Qualification of the Electors belongs to the House of Commons only, those, I apprehend, are Words of too large Extent and ill Consequence. Suppose there was an Action brought upon the last Act of Parliament, for a false or double Return.—

Mr. *Freeman*. There is an Exception in the Question as to that.

Mr. *Walpole*. I know there is; but suppose an Action is brought upon that Statute, the Officer may have proceeded with the greatest Impartiality, may have taken the Poll with the greatest Exactness and Justice, and there may appear to be an equal Number of Votes for each Candidate, whereupon he makes a double Return, and this brings it to be determined by the Committee of Elections, and they vote one of them duly elected. This Gentleman that had the Favour of the Committee (tho' afterwards possibly it might be made appear, that by Bribery or Corruption, and at a great Expence, he procured himself to be elected) after you have voted him duly elected, he hath nothing to do but to try his Action, and see if he can make his double Damages amount to his Expences. The first Thing he is to do, is to produce the Vote of the House of Commons that declared him duly elected, contrary, perhaps, to the last Determination in Parliament, which, in every Place, is to be the Guide to the returning Officer. But shall there then be given in Evidence no Qualification of the Electors? Nothing to prove that the Persons admitted to vote were qualified according to such last Determination? Or shall that Vote of the House of Commons, that was intended only to bring him into this House, recover him 5 or 600*l.* Damages? I take it to be so as the Law stands. Now it ought to be seen who hath the greater Number of legal Votes, and whether duly qualified; and in that Case you must suffer the Matter again to be tried by the Court, and you do, in some Measure, make them Judges of the Qualifications of the Electors; if it were otherwise, they could not inquire into the Majority of legal Votes.

What happens in the Case of a Mayor, may be in the Case of a Sheriff: If a Mayor or a Constable may deny a Man his Vote that hath an uncontroverted Right in a Corporation, a Sheriff may refuse a Freeholder, and strike off enough to make a Majority for whom he pleases. You had once the Case before you, Whether a Sheriff could refuse a Scrutiny, and one or two Gentlemen would have given that Power to a Sheriff; but a learned Gentleman thought it a dangerous Question, and he desired to come to the Merits of the Election; and that was determin'd, and you voted the worthy Member duly elected, and thought it a dangerous Thing to determine, Whether the Officer had that Power one Way or another? I think that Part of the Question, which concerns the Qualification of the Electors, ought to be left out.

Mr. *Freeman*. I will read the Question (*which he did*)

Marquis of *Hartington*. Sir, I think it is a constant Rule, where a Question is complicated, 'tis the Right of every Member, if he desire it, to have the Question divided, and I think it regular to do it by an Amendment; and therefore I second that worthy Gentleman, that you would leave out those Words that relate to the Qualification of the Electors.

Mr. *Solicitor-General*. My Lord is undoubtedly right in what he desires; That if there be any Words in the Question to which Gentlemen have a Dislike, that Question is not to be put; but only, Whether those Words shall stand Part of the Question: Therefore if those Words of the Qualification of the Electors do give Offence, it must be put, Whether they shall stand Part of the Question? But I hope at the same time Gentlemen will apprehend, that leaving out those Words, leaves out all that you have debated on.

Sir *Christopher Musgrave*. No doubt if any Question is complicated, Gentlemen do not know how to give an Affirmative or a Negative, and you must divide it: But I hope Gentlemen will consider the latter Part of the Question is the main Thing whereon you have debated; for if you do not assert that you have the Power of determining the Qualifications of the Electors, you give up the Right of the Commons of *England*: I do agree that the Question may be divided.

Mr. *Freeman*. That which is debated now, is, Whether these Words shall stand Part of the Question?—

Sir *Thomas Meres*. Sir, I think the Question ought to be divided.

Mr. *Freeman*. The Question, as I have it upon my Paper, is this:

That according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of *England* in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament.

But some Gentlemen are for leaving out these Words, [“Neither the Qualification of any “Elector, or”] So that I must put a Question, Whether these Words shall stand Part of the Question?

Members. Aye, aye.

Then Mr. *Freeman* put the Question, and the Committee divided.

Teller for the Aye's, Mr. *Gulston* — 215

Teller for the No's, Mr. *Wylde* — 97

So it was carried, that those Words should stand Part of the Question.

And the main Question being put,

*Resolved*,

2. That according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of *England* in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament.

*Resolved*,

3. That the examining and determining the Qualification or Right of any Elector, or any Person elected to serve in Parliament, in any Court of Law, or elsewhere than before the Commons of *England* in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament, will expose all Mayors, Bailiffs, and other Officers, who are obliged to take the Poll, and make a Return thereupon, to Multiplicity of Actions, vexatious Suits, and unsupportable Expences, and will subject them to different and independent Jurisdictions, and inconsistent Determinations in the same Case, without Relief.

*Resolved*,



*Resolved,*

4. That *Matthew Ashby*, having in contempt of the Jurisdiction of this House, commenced and prosecuted an Action at Common Law against *William White*, and others, the Constables of *Aylesbury*, for not receiving his Vote at an Election of Burgesses to serve in Parliament for the said Borough of *Aylesbury*, is guilty of a Breach of the Privilege of this House.

*Resolved,*

5. That whoever shall presume to commence or prosecute any Action, Indictment, or Information at Common Law, which shall bring the Right of Electors, or Persons elected to serve in Parliament, to the Determination of any other Jurisdiction than that of the House of Commons, except in Cases specially provided for by Act of Parliament, such Person and Persons, and all Attornies, Solicitors, Counsellors, Serjeants at Law, soliciting, prosecuting, or pleading in any such Case, are guilty of a high Breach of the Privilege of this House.

*Ordered,*

That the said Resolutions be fixed up on *Westminster-Hall Gate*, signed by the Clerk.

These Resolutions, with this (to wit,

*Resolved,*

1. That according to the known Laws and Usage of Parliament, it is the sole Right of the Commons of *England* in Parliament assembled, except in Cases otherwise provided for by Act of Parliament, to examine and determine all Matters relating to the Right of Elections of their own Members) Before passed in the Committee, were reported to the House.

*Mercurii 26 Januarii, 1703.*

*Mr. Freeman* reported the five Resolutions agreed to by the Committee; the first Resolution was not opposed, but after the second Resolution (*viz.*

That according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of *England* in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament)

Was read the second time by the Clerk, the Question (according to Order) being proposed to agree with the Committee in that Resolution, the *Marquis of Hartington* stood up in his Place, and spoke to this Effect.

*Marquis of Hartington.* I do not expect the House will be of a different Opinion from the Committee; but I think it is my Duty, when I apprehend what you are doing will be of ill Consequence to the Constitution, to give my Dissent in every Step. I think it will be dangerous to the very Being of this House: If this Maxim had been allowed formerly, I think there would have been no need of taking away of Charters, and of *Quo Warranto's*; by the Influence of Officers they might have filled this House with what Members they had pleased, and then they could have voted themselves duly elected.

*Sir William Strickland.* *Mr. Speaker*, I cannot agree to this Resolution; I think it deprives the People of *England* of their Birth-right: For they who have Freeholds in any of your Counties, or Freedoms in any Corporation, have as much Right to vote in Elections to Parliament,

as they have to their Estates. And if any Gentleman would subject them to such arbitrary Proceedings, that a Sheriff or any other Officer may deny them this Privilege, give me Liberty to say, I must be always against any such thing; for though you can punish the Officer, you cannot give any Satisfaction to him that receives the Injury.

*Mr. St. John.* Sir, I do not rise up to trouble you long, but to speak to one Point that was mentioned by a Noble Lord over the way. I shall be as tender as any Man alive of doing any thing against the Liberty of the People; but I am for this, because I take it to be the greatest Security for their Liberty. The Noble Lord was pleased to take Notice, that in the Consequence the Crown would have a great Influence on those that are to return the Members of the House of Commons; and when they were in, they might vote for one another. I cannot think that the Liberties of the People of *England* are safer in any Hands below, or that the Influence of the Crown will be stronger here than in other Courts.

*Marquis of Hartington.* I think that Gentleman hath not answered what I said. I shall never have any Suspicion of any that sit in this House now; but when those that have no Right are returned, and make a Majority, I think it will not be safe.

*Mr. Ward.* I do not apprehend that Consequence from this Resolution. I think if it was so, this should have been offered before the first Resolution was passed, which hath passed in the House, and Committee *Nemine contradicente*; for you cannot determine the Right of any Members sitting here, without determining the Right of the Electors.

*Mr. Lowndes.* I cannot but think it will be harder to influence this House to get an ill Vote, than it will be in another Place: However, if I am a Freeholder, and have a Right to vote in a County, or a Freeman, and have a Right to vote in a Borough, by admitting Persons to vote that have no Right, it may be as much Prejudice to me, for that may make my Vote signify nothing: And there is as much Injury one way as the other. If all the People of *England*, who have a Vote, should go together by the Ears in *Westminster-Hall*, and dispute there who has a Right to vote, and who not, I believe the Judges of the Common Law, and Noble Peers of the other House, would be glad, in a little time, to restore the Right where it is, it would breed so much Confusion. If Gentlemen are not satisfied already, they may easily be so, That there is no Defect of Power in this House, but they have a Power to do Justice in all Cases of Elections; and I hope every body will take Care, not only to maintain the Rights of the People that sent them hither, but the Trust lodged in them, which they cannot depart from by the Rules of Justice.

Then the second, with the other three Resolutions passed in the Committee, were agreed to by the House without a Division, with this Amendment only, of leaving out [*at Common Law*] in the fifth Resolution.

But the House, though they voted *Ashby* guilty of a Breach of Privilege, in commencing and prosecuting the said Action, yet there having been no Declaration of the House in that Case before,

before, they made no Order for taking him into Custody, as usual in Cases of Breach of Privilege.

Upon these Proceedings of the House of Commons, the House of Lords appointed a Committee, who drew up *The State of the Case upon the Writ of Error* in their House; which is as followeth.

*The REPORT of the Lords Committees appointed to draw up The State of the Case upon the Writ of Error, lately depending in the House of Peers; wherein Matthew Ashby was Plaintiff, and William White, and others, Defendants. With the Resolutions of the House of Peers, relating thereunto.\**

*Ashby against White, &c. at +*

**T**HE Plaintiff in this Action declares, That the 26th of December, in the 12th Year of King William the Third, a Writ issued out of Chancery, directed to the Sheriff of Bucks, reciting, That the King had Ordered a Parliament to be held at Westminster, on the 6th of February following: The Writ commanded the Sheriff to cause to be elected for the County, Two Knights; for every City, Two Citizens; and for every Borough, Two Burgesses; which Writ was delivered to the Sheriff, who made a Precept in Writing, under the Seal of his Office, directed to the Constables of the Borough of Aylesbury, commanding them to cause Two Burgesses of the said Borough to be elected, &c. which Precept was delivered to the Defendants, to whom it did belong to execute the same. By Virtue of which Writ and Precept, the Burgesses of that Borough, being summoned, did assemble before the Defendants, to elect Two Burgesses; and they being so assembled, in order to make such Election, the Plaintiff being then a Burgess and Inhabitant of that Borough, being duly qualified to give his Vote at that Election, was there ready, and offered his Vote to the Defendants, for the Choice of Sir Thomas Lee, Bart. and Simon Mayne, Esq; and the Defendants were then required to receive and admit of his Vote. The Defendants being not ignorant of the Premises, but contriving, and fraudulently and ma-

liciously intending to damnify the Plaintiff, and to defeat him of that his Privilege, did hinder him from giving his Vote, and did refuse to permit him to give his Vote; so that the Two Burgesses were elected without any Vote given by the Plaintiff, to his Damage, &c. Upon Not Guilty pleaded, the Cause went down to Trial, and a Verdict was given for the Plaintiff, and Five Pounds Damages, and also Costs.

It was moved in the Court of King's-Bench in Arrest of Judgment, That this Action did not lie, and that Point was argued by Council, and afterwards by the Court.

The Lord Chief Justice Holt was of Opinion, That Judgment in this Case ought to be given for the Plaintiff; but Mr. Justice Powell, Mr. Justice Powis, and Mr. Justice Gold being of a different Opinion, Judgment was entered for the Defendant: Whereupon the Plaintiff brought a Writ of Error in Parliament; and the Cause being argued at the Bar of the House of Lords by Council, and Ten of the Judges, who were present in the House, being heard, and the Matter fully debated by the Lords, & the House was of Opinion, That the Judgment given in the King's-Bench was erroneous, and that the Plaintiff had a good Cause of Action, and ought to have Judgment.

To maintain this Opinion, these Three Positions were laid down.

I. That the Plaintiff, as a Burgess of this Borough, had a legal Right to give his Vote for the Election of Parliament Burgesses.

II. That, as a necessary Consequence thereof, and an Incident inseparable to that Right, he must have a Remedy to assert and maintain it.

III. That this is the proper Remedy which the Plaintiff hath pursued, being supported by the Grounds and Principles of the ancient Common Law of England.

To make good the First Position, That the Plaintiff has a legal Right to give his Vote at the Election of Burgesses for this Borough, it was said, that it is well known, the House of Commons consists of Knights, Citizens, and Burgesses:

The Knights of Shires represent all the Freeholders of the Counties. Anciently, every the least Freeholder had as much Right to give his Suffrage, as the greatest Owner of Lands in the County.

\* *Die Lunæ, 27 Martii, 1704.* It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Report made from the Lords Committees, appointed to draw up the State of the Case upon the Writ of Error, lately depending in this House, wherein Matthew Ashby was Plaintiff, and William White, and others, Defendants, and the Resolutions made this Day relating thereunto, shall be forthwith printed and published.

† Salkeld's Reports, fol. 19. in Case.

*Matth. Johnson, Cleric' Parliamentor'.*

§ The CASE of William White, Richard Talboys, William Bell, and Richard Heydon, Constables of the Town of Aylesbury, in the County of Bucks, in the Year 1700. In a Writ of Error brought in the House of Lords by Matthew Ashby, upon a Judgment given for the Constables against him in the Court of Queen's-Bench, last Michaelmas Term, as drawn up by their Council, and presented to the House.

The Plaintiff Ashby being a poor indigent Person, and coming to settle in Aylesbury, the Overseers of the Poor there warn'd him out of the Parish, unless he would give Security to save the Parish harmless, and to that Purpose complained to the next Justices of the Peace, to get an Order to remove him; whilst this Matter was in Controversy, the Election for Burgesses of Parliament came on, and the said Ashby offering himself to be Poll'd, the Constables (now the Defendants) refused to receive him to Poll, being (in their Opinions) no settled Inhabitant there, nor did he ever contribute to the Church or Poor, either before or since the Election. After the Election was over, the said Ashby brought his Action on the Case against the Constables, wherein he sets forth, that he had Right to Vote for Burgesses there, and that at that Election he offer'd to Poll for Sir Thomas Lee and Mr. Mayne, and that the Constables refused to receive his Poll, to his Damage of 200 l.

The Constables pleaded Not Guilty, and thereupon a Trial was had at the Assizes at Bucks, and Ashby got a Verdict against them, and had Five Pounds Damages given.

Whereupon, according to the constant Course of that and all other Courts, it was moved in Arrest of Judgment in the Queen's-Bench, where the Action was brought, That notwithstanding the Verdict which only found the Fact, yet no such Action did by Law lie against the Defendants; and after several Arguments at the Bar, and at last at the Bench, Three Judges (against the Chief Justice) held, that the Action did not lie, and so Judgment was given for the Constables.

And now the Plaintiff Ashby hath brought a Writ of Error in Parliament.

The Defendants conceive the Judgment in the Queen's-Bench well warranted by Law.



County. This Right was a Part of his Freehold, and inherent in his Person by Reason thereof, and to which he had as good a Title, as to receive the natural Profits of his Soil. This appears by the Statute of 8 H. VI. cap. 7. which recites the great Inconvenience which did arise in the Election of Knights of the Shires, by Men that were of small Substance, who pretended to have an equal Right with Knights and Esquires of the same County, therefore that Right was abridged, and confined only to such Freeholders as had Forty Shillings *per Annum*; but thereby it appears, that the Right which a Freeholder hath to Vote in the Election for Knights of the Shire, is an Original and Fundamental Right belonging to him as he is a Freeholder.

The Second and Third Sort of Men, which compose the great Representation of the People of England, are Citizens and Burgesses, who, though they differ in Name, yet are in Essence and Substance the same, for every City is a Borough, and, as such, sends Members to Parliament.

There are two Sorts of Boroughs, the one more Ancient, the other more Modern.

Of the first Sort are the most ancient Towns of England, whose Lands are held in Burgage, and by Reason thereof had the Right and Privilege annexed to their Estates, of sending Burgesses to Parliament.

The second Sort are those Cities and Boroughs that have a Right by Prescription, Time immemorial, or by Charter, within Time of Memory, to chuse Burgesses for the Parliament; both these are upon several Foundations, the one as belonging to their Burgages, the other as belonging to their Corporations; the first is a real Right belonging to their Houses and Lands, the other is a personal Right belonging to their Body Politick.

As for the first, it is sufficiently described in Littleton's Tenures, Sect. 162, 163, 164. A Tenure in Burgage is a Tenure in Socage, and is called a Tenure in Burgage, because these are the most ancient Towns in England, and from thence came the Burgesses to Parliament, and

they who have this Privilege, have it as belonging to their Estates or Possessions.

The other Right of chusing Parliament Burgesses, is not annexed to any Freehold or Estate in Possession, but vested in the Corporation of the Place, and is created in this Manner, viz.

When a Town was incorporated, a Grant was either then, or after made to the Body Politick, that they shall have two Burgesses for the Parliament, to be chosen either by all the Freemen and Inhabitants of the Place, or such a selected Number, as is prescribed by the Charter.

The Inheritance of this Privilege is in the whole Corporation aggregate, but the Benefit, Possession, and Exercise is in the Persons of those, who, by the Constitutions of those Charters, are appointed to elect.

And in all Cases, where a Corporation hath such a Privilege, the Members thereof, in their private Capacity, have the Benefit and Enjoyment thereof, because the Corporation, as such, is not to be represented: For it is not necessary that it should have any Estate, but by being a Corporation, they have only a Capacity to have Estates. *Jones 165. Hyward & Fulcher.* For as the Citizens and Freemen of a Place are incorporated for the better Government of those of the Place, so is this Privilege of having Burgesses given for the Advantage of the particular Members thereof, whose Estates are to be bound by the Acts of their Representatives.

And therefore the Wages of Citizens and Burgesses were always levied not upon the Estates or Goods of the Corporation, but upon the Goods and Estates of the Members thereof.\*

It appears by other Instances, that it is usual and proper for Corporations to have Interests granted to them, which enure to the Advantage of the Members in their private Capacities. *Moore 832. Sir Thomas Waller versus Hanger.* The King granted to the Mayor and Citizens of London, that no Prifage be taken and paid for Wines of the Citizens and Freemen of London. This enures to the Benefit of every Citizen and Freeman

1. No such Action hath ever been brought, notwithstanding the many Elections that have been controverted every new Parliament; whereby 'tis evident, that it hath been the constant Opinion of all Lawyers, and others, in all Ages, that such Action would not lie.

2. Several Acts of Parliament have been made to give Remedy by Actions in *Westminster-Hall*, in some particular Cases of Elections to Parliament, which shew there was no Remedy at Common Law in those Courts.

3. There never were but Three Actions upon the Case brought by Candidates for false Returns, viz. *Neuill's Case* in the late Times, and *Sir Samuel Barnardiston's Case*, and *Onslow's Case* in the Time of King Charles the Second; in all which Cases the Defendants prevailed upon the Point of Law, viz. That such Action would not lie.

And if such Action does not lie for one Elected, much less will it lie for an Elector.

4. To support every Action upon the Case, there must be Damage *in presenti*, or a Possibility of Damage *in futuro*, which there cannot be in this Case, unless it be presumed, That, contrary to the Act of Parliament, the Plaintiff was to have Money for his Vote.

5. If there was *Damnum* (which there is not) yet it cannot be pretended there was *Injuria*; and *Damnum absque Injuria*, is not sufficient to support an Action upon the Case. As at the Common Law: If the lawful Patron presented his Clerk to the Bishop, and he refused to admit him, it is conceived, no Action upon the Case lay against the Bishop, but a *Quare Impedit*, in which at Common Law, no Damages were given, which is a much stronger Case than this.

6. This is not to be compared to other Cases, where the Party hath no Remedy elsewhere than in *Westminster-Hall*; for here the Plaintiff hath a proper Remedy by applying to the House of Commons; it being usual for Electors, who think themselves aggrieved by the Chief Magistrates in an Election, to Petition the House of Commons, altho' the Election is not contested by the Candidates, and Parliamentary Causes are to be determined in Parliament: And therefore,

7. 'Tis conceived, That since this Matter concerns the Election of Members to serve in Parliament, the Courts of *Westminster-Hall* being not empowered by any Act of Parliament in this Case, have no Cognizance of it; but the House of Commons have the Determination of it: And this Jurisdiction is confirmed to them by Parliament; for by the Act 7 and 8 W. 3. cap. 7. If any Person shall return a Member to serve in Parliament, contrary to the last Determination in the House of Commons, of the Right of Election in such Place, the Return shall be adjudged a false Return; by which 'tis evident, that the Commons are the only Judges in all Matters where the Right of Election may come in question, as it must of Necessity do, in all Cases where the Question is, who are the Electors.

8. If this Action should prevail, the Chief Magistrates, in all Places where Elections are made, would be in a miserable Condition upon every new Parliament, by reason of a Multitude of Actions which probably would be brought against them upon all contested Elections, and by the different Judgments that possibly may be given in the House of Commons, and in *Westminster-Hall*, touching the same Election.

9. The laying it to be done *false & malitiose* (which are grown to be almost Words of Course in Actions on the Case) cannot give a Jurisdiction where it was not before; and if those Words shall be sufficient by being annexed to a Man's Intention, almost all a Man's Actions may be brought into *Westminster-Hall* by those Words, and subjected to the Power of a Jury.

T. Powys, Con. Phipps.

\* 46 Ed. III. m. 4. dorso, &c.



man of London for his own Wines, in which the Corporation of the City hath no Interest.

But there is no such Notion in the Law of England, as a Right without a Remedy.

The same Thing appears by the Case of *Waller and Spateman*, 1 Saund. 343. and by the Case of *Meller and Walker*. These Instances make it sufficiently appear, That though the Inheritance of this Franchise, be in the Body Corporate, yet it is for the Benefit of the particular Members thereof: And it is certainly a great Advantage for the Men or Inhabitants of a Place to chuse Persons to represent them in Parliament, who thereby will have an Opportunity, and be under an Obligation to represent their Grievances, and advance their Profit.

Of this Opinion have Two Parliaments been, as appears by Two several Acts, the one 34 & 35 H. VIII. cap. 13. the other 25 Car. II. cap. 9. The first is an Act for making Knights and Burgesses within the County and City of Chester, which begins in this Manner, *In humble wise shew to your Majesty, the Inhabitants of your Grace's County Palatine of Chester, That they being excluded and separated from your High-Court of Parliament to have any Burgesses within the said Court, by Reason whereof, the Inhabitants have hitherto sustained manifold Losses and Damages, as well in their Lands as Goods and Bodies; therefore it was enacted, That they should have Knights for the County, and Citizens for the City of Chester: The other Act, which constitutes Knights and Burgesses for the County Palatine, and City of Durham, recites, That the Inhabitants thereof hitherto had not that Liberty and Privilege of electing and sending Knights and Burgesses to the High Court of Parliament.*

The Application of these Two Acts is very plain; the first saith, To be excluded from sending Knights and Burgesses to Parliament, is a Damage to Lands, Goods, and Body; the other saith, That it is a Liberty and Privilege to send them.

Thus the Right of Election is explained, and shewed to be a Legal Right.

That of electing Knights of Shires, belonging to and inherent in the Freehold.

The other of electing Burgesses, is belonging in some Cities and Towns to the real Estates of the Inhabitants; and in others, is vested in the Corporation, for the Benefit of the particular Members, who are the Electors; the having of which is a great Benefit and Advantage to the People thereof, and will prevent great Loss and Damage that otherwise would ensue.

II. It follows, That in Consequence of this Right or Privilege, the Possessors thereof must have a legal Remedy to assert and maintain it.

It was said, That there are many Rights for which a Man has no Remedy by the Common Law, as in Case of a Legacy given, if it be not paid, the Party cannot bring an Action for it. This is very true, but not applicable to the present Purpose; for the Constitution of the English Government has wisely distributed to several Courts the Determination of proper Causes, but has left no Subject, in any Case where he is injured, without his adequate Remedy, if he will go to the right Place for it. If a Man will seek for a Remedy at Common Law, for a Legacy, which by our Constitution is to be recovered in the Ecclesiastical Court, it is his own Fault if he

do not recover, as it would be if he should begin a Suit for Land in the Court of Admiralty, or go for Equiry to the Common Pleas.

He who loses or quits his Remedy, loses his Right: If a Man has a Bond for Payment of One Thousand Pounds, he has no Remedy to recover this Money but by Action; therefore, if he releases all Actions, he loses his Right to the Money, because he has given away the Means to recover it, *Coke's 6th Rep. 58. Bredman's Case*. If a Man purchases an Advowson, and at the next Avoidance suffers an Usurpation, and brings not the *Quare Impedit* in Time, he hath lost all manner of Remedy, and in Consequence his Right, to which neither he nor his Heirs can ever be restored.

Would it not look very strange in a Constitution so formed, that the Commons of England have an undoubted Share in the Legislative Authority, which is to be exercised by their Representatives chosen by themselves, in which every Freeholder, of Forty Shillings *per Annum*, hath a Right to vote for the County, every Citizen for a City, and every Burgefs for a Borough; that if the Sheriff, or other Officer, who is to cause the Election to be duly made, shall hinder or deprive any of those Electors of his Right, the Person Injured shall have no Remedy, tho' the Injury be done to such a Right, upon the Security whereof the Lives, Liberty, and Property of all the People of England so much depend?

That the Defendants, in this Case, by hindering the Plaintiff from Voting, have done ill, cannot be denied; because they have excluded one who has a Right from his Vote. Then, if the Law doth not allow an Action to the Party injured, it tolerates the Injury, which is absurd to say is tolerable in any Government.

There was much Weight laid upon the Case of *Ford and Hoskins*, 2 Cro. 388. Mo. 842. which is, that where, by the Custom of the Manor, every Tenant for Life might name his Successor for his Life, whom the Lord is to admit; if one be named, and the Lord refuses to admit him, it was held, an Action on the Case would not lie, because the *Nominee* had no Right without being admitted. But the Reason given for that Opinion, shews it has no Relation to this Case, for the Plaintiff's Right of voting is vested in him without any previous Admittance; therefore, tho' it should be Law that no Action will lie for not giving a Right, yet certainly an Action must lie for defrauding and hindering a Man to enjoy a Right that he hath.

When any Statute requires an Act to be done for the Benefit of another, or to forbear the doing of an Act, which may be to his Injury, tho' no Action be given in express Terms by that Statute, for the Omission or Commission, the general Rule of Law, in all such Cases, is, That the Party injured shall have an Action, *Coke 10. Rep. 75. The Case of the Marshalsea, 12 Rep. 100. Co. Mag. Car. 118*. This is a Maxim allow'd and approved of in all Ages.

There is the same Reason where the Common Law gives a Right, or prohibits doing a Wrong: But in this Case, an Act of Parliament is not wanting, for the Statute of *West. 1. cap. 5*, enacts, *That Elections shall be free*; if he who hath a Right to vote be hindered by him who is to take his Vote, or to manage the Election, that Election



is not free, such an Impediment is a manifest Violation of that Statute, as well as an Injury to the Party whose Vote is refused. This Statute of *West. 1.* shews what Opinion the King and Parliament had of the great Consequence it was to the whole Realm, that People should have their Freedom in Choice; and though the Common Law was the same before, as appears even by the Statute it self, the Words whereof are, *Elections ought to be Free*; yet it was judged necessary to add the Sanction of an Act of Parliament thereunto; *The King commandeth upon great Forfeiture, That no Great Man, or other, by Force of Arms, or by Malice, or Menaces, shall disturb any to make Free Election.* The Defendants did not, by Force of Arms, drive the Plaintiff away from the Election, nor by Menaces deter him, but they did maliciously hinder him (so it is charged by the Plaintiff in the Declaration, and it is found by the Jury to be done by Fraud and Malice) and so the Defendants are Offenders within the very Words of the Statute of *West. 1.* Where the Law is so clear as to the Right, and the Duty so strictly enjoined by Act of Parliament to be observed, it seems a great Presumption to make it but a light Thing.

It being apparent that the Plaintiff had a Right, and that the Defendants have done him Wrong, and that by Consequence of Law he must have some Remedy to vindicate his Right, and to repair the Wrong.

III. The third Thing to be shewn is, That the Remedy the Plaintiff pursued by bringing this Action, is the proper Remedy allowed by the ancient Law of *England*.

This Action is that which is called in the Law, an Action upon the Case; that is, founded upon the particular Case of the Party injured.

The Law in all Cases of Wrong and Injury hath provided proper and adequate Remedies.

1. When a Man is injured in his Person, by being beaten or wounded, the Law gives him an Action of Trespass, Assault and Battery; if by being imprisoned, an Action of false Imprisonment.

2. If his Goods be taken away, or Trespass done unto his House or Lands, an Action of Trespass lies to repair him in Damages.

3. If a Man hath a Franchise, and is hindered in the Enjoyment thereof, the proper Remedy is by an Action upon the Case.

The Plaintiff in this Case hath a Privilege and a Franchise, and the Defendants have disturbed him in the Enjoyment thereof, in the most essential Part, which is his Right of Voting.

4. Where any Officer or Minister of Justice intrusted with the Execution of the Process of Law, does an Injury, an Action of the Case lies against him. If the Sheriff will not execute a Writ by arresting the Party-Defendant, or taking his Goods, the Plaintiff shall have his Action upon the Case, because he refused to do his Duty to the Plaintiff's Damage.

The Precept which the Defendants received from the Sheriff in this Case, was founded upon the King's Writ; and the Defendants are commanded to cause two Burgeesses to be elected for the Borough of *Aylesbury*, of which they are to give Notice, and to admit every one who hath a Vote to make use of it; if they refuse

any Man to vote who hath a Right, they act contrary to the Duty of their Office.

It was objected, That it did not appear that the Persons for whom the Plaintiff voted were elected, nor that they would have been elected if his Vote had been admitted.

The Answer is, That it is not material whether the Person for whom the Plaintiff voted was chosen, or would have been chosen, if his Vote had been taken; his Right and Privilege is to give his Suffrage, to be a Party in the Election; if he be excluded from it, he is wronged, tho' the Persons for whom he would have given his Vote were elected.

The Right of Action must accrue upon the Refusal of the Vote, and is never to be made better or worse by the Return, which is a Matter *ex post facto*.

It was said in the arguing this Case, That the Plaintiff had no Damage; or at least, that there was no such Injury or Damage done to him as would support an Action.

The Answer to that is, That the Law will never imagine any such thing as *Injuria sine Damno*. Every Injury imports Damage in the Nature of it. If a Man pick a Lock, and come into an House without the Consent of the Owner, perhaps there is no pecuniary Damage done to the Value of a Farthing; yet the Owner shall have an Action against him, and recover Damages for the Invasion of his Possession and Property. There are many Cases of the same nature, which have been determined upon this Ground. In the Case between *Starling and Turner*, 24 *Car. 2.* in *Com. Ban.* (see *Ventris* first Part, p. 206.) and afterwards in *Ban. Reg.* The Plaintiff *Turner*, amongst others, stood to be one of the Bridge-masters of *London-Bridge*, which Officer is to be elected by a Common-Hall of the City of *London*: The Question was, Who had the greatest Number of Voices? The Plaintiff demanded the Poll; and the Defendant, being then Lord Mayor of *London*, refused it: It was adjudged, That the Action was maintainable for refusing the Poll; because every Candidate has a Right to have it; and though perhaps if the Poll had been granted to the Plaintiff in that Action, it might have been against him, yet the Denial of that Right was a good Ground of Action.

Upon the same Reason, the Case 29 *E. 3.* 18. was determined; and also the Case of *Hunt and Dowman*, 2 *Cr.* 478. 2 *Rolls* 21.

It is apparent by what has been said, That the Plaintiff in this present Case hath been injured, in being denied his Right; and no good Reason can be assigned that so affects this Case, as to make it differ from other Cases; though to that purpose several Matters were urged and insisted upon. As first, that this would be the Occasion of many Actions.

If that be so, there is the greater Reason to support this Action, to punish the many Wrongs that have been done, which will prevent any more of the like nature. If Offences multiply, Remedies against them ought to be advanced. If other Officers of Boroughs have been, or shall be guilty of the like Misfeasances as these Defendants have been, it is fit they should be liable, as these Defendants are, to make Satisfaction. If one Man be beat and imprisoned, is it any Objection

Objection against his having an Action, because all others who shall be as evilly treated as he hath been, shall have the like Remedies? The only Means to hinder Corruptions that will soon become frequent among those Officers of Boroughs and Corporations, is, To let them see that they are obnoxious to the Law, and that their Purfes must make Satisfaction to all whom they shall injure in this Manner. It is true, if one Act which tends to the Injury of many Persons be committed, no one Person injured shall be allowed to have an Action, because the rest might have the same. *Co. 5. Rep. 72. Williams's Case, 3 Cr. 664. Pineux ver' Hovenden*; as the Case of not saying Divine Service in a Chapel of a Manor to the Lord and Tenants; or for stopping of a Lane or Common-way, because the Defendant for one Act would have a Multitude of Suits against him, the Injury alike affecting a Multitude: But the Refusal of every Vote is a distinct Act: The Party grieved, whose Vote was denied, can only bring an Action for the Refusal; the others, whose Votes were admitted, are not concerned. And if an Officer denies an hundred, who have a Right, these are a hundred several Wrongs, for which he ought to be liable to as many several Actions. As if a Man will make it his Business to sling Stones, and shall hit a hundred several Men, he must make Satisfaction to them all: But surely this is so far from being an Objection, that it is a strong Argument to support the Action: For if the Mayor or Bailiff of a Borough shall have Liberty to refuse Men who have Votes, he can easily make a Majority to vote on his Side; and then, What will become of Elections? The Officer will return him that is elected by a Majority of his own making, by excluding the Votes of others that have Right.

This would encourage Officers to be partial and corrupt, and to return divers Persons to be elected in that Manner, who at least must have Possession of Seats in the House of Commons for some time, and give Voices in the making of Laws, and imposing of Taxes, until the Right of Election be determined.

And though upon hearing the Cause in the House of Commons, this Matter may be set right at last; yet, what can compensate for the Mischief that may be done to the Kingdom in the mean time, by the Votes of those who shall be partially returned, and are not the Representatives of the People of the Place who are to chuse them?

Besides, the forementioned Rule against multiplying Actions is confined to such Acts where there is another Remedy to be had; but where there is no other Remedy but an Action, the Wrong-doer must answer to so many several Actions as there are Persons injured. Suppose a Man will plough up the Ground in which a hundred Persons have a Common, he must answer all their Actions. If the Inhabitants of a Town have a common Watering-place, and a Stranger stops the Current, whereby the Water is diverted, every Inhabitant shall have his Action, because there is no other Remedy.

The injured Plaintiff in this Case has no other Remedy besides this Action; no Indictment lies, because it is a personal Wrong to the Party, and no Wrong to the Publick, but only in the Consequence of it, as an evil Example, which tends

to the Encouragement of other such Officers to commit the like Transgressions: Nor is there any Danger to an honest Officer, that means to do his Duty; for where there is a real Doubt touching the Parties Right of Voting, and the Officer makes use of the best Means to be informed; and it is plain his Mistake arose from the Difficulty of the Case, and not from any malicious or partial Design, no Jury will find an Officer guilty in such a Case, nor can any Court direct them to do it; for it is the Fraud and the Malice that intitles the Party to the Action: In this Case, the Defendants knew the Plaintiff to be a Burgess, and yet fraudulently and maliciously hindered him from his Right of Voting; and Justice must require that such an obstinate and unjust ministerial Officer should not escape with Indemnity.

That the Officer is only ministerial in this Case, and not a Judge, nor acting in a judicial Capacity, is most plain; his Business is only to execute the Precept, to assemble the Electors to make the Election, by receiving their Votes, computing their Numbers, declaring the Election, and returning the Persons elected: The Sheriff, or other Officer of a Borough, is put to no Difficulty in this Case, but what is absolutely necessary in all Cases. If an Execution be against a Man's Goods, the Sheriff must, at his Peril, take Notice what Goods a Man has.

Another Objection was made in respect to the Novelty of the Action; it was said, Never any such Action was brought.

In Answer to this Objection, it may be said, That probably there have not been many Occasions given for bringing such Suits. It is to be hoped, that very few have ever been so presumptuous, as to dare to make an obstinate and malicious Refusal of an undisputed Vote. If the Case has happened before, perhaps the Party, out of Consideration that only small Damages were to be expected, might be discouraged, and think it better to acquiesce. And it is probable, the ill-designing Officer would be at least so cautious as to refuse the Votes of such Persons only as he thought, by reason of the Meanness of their Circumstances, were unable to vindicate their Right. It is not every one that has such a true *English* Spirit as the Plaintiff, who could not sit down meanly under a Wrong done to him in one of the most valuable Privileges of an *Englishman*. It is not the Novelty of the Action that can be urged against it, if it can be supported by the old Grounds and Principles of Law: The Ground of Law is plain, certain, and indeed universal, that where any Man is injured in his Right, by being either hindered in, or deprived of the Enjoyment thereof, the Law gives him an Action to repair himself.

The Case of *Hunt and Dowman*, which was, 16 Jac. 1. *Ann. Dom. 1618.* of an Action by the Landlord against the Tenant, for hindering him from searching his House to see whether it was in Repair, was never brought before that time; and that of *Turner and Starling* was not brought till 23 Car. 2.

The Law of *England* is not confined to particular Precedents and Cases, but consists in the Reason of them; which is much more extensive than the Circumstance of this or that Case. - *Ratio Legis est Anima Legis; ubi*



*ubi eadem Ratio, ibi idem Jus*, are known Maxims.

An Action against the Master of a Ship, for that the Ship, lying in the River of *Thames*, was robbed, was maintained upon the same Reason as against a common Carrier; yet such an Action was never known until 23 Car. 2. in the Case of *Moss and Slue*. 1 Cr. 15. *Jones* 93. *Palmer* 313. *Smith* and *Cranshaw*, an Action of the Case was brought for maliciously, and without any probable Cause, indicting the Plaintiff of High Treason: This was the first Action that was ever brought in such a Case; and yet it was adjudged maintainable upon the same Reason as upon a malicious Indictment of Felony. 2 *Levinz* 250. *Heming and Beal*, an Action of the Case was brought against the Mayor of a Town, for refusing the Plaintiff to give his Vote at the Choice of a new Mayor; and there was not any Scruple made, but that the Action did well lie, though that was the first Precedent.

It is granted, That if a Freeman who hath a Right to give his Vote for the Choice of a Mayor be denied his Vote, he may maintain an Action upon the Case.

There can be no Difference between that Case and this, unless it can be supposed that the Right to vote at the Election of a Mayor is of higher Estimation in the Eye of the Law, than a Right to chuse Members to serve in the High Court of Parliament.

This Action is not only founded upon the Reason of the Common Law, but it hath the Sanction of an Act of Parliament, viz. the Statute of *West. 2. cap. 24.* which says, *That whenever from thenceforth it shall fortune in Chancery, that in one Case a Writ is found, and in a like Case falling under like Right, and wanting like Remedy, none is found, the Clerk of the Chancery shall agree in making a Writ, and by Consent of Men learned in the Law, a Writ shall be made, lest it should happen hereafter that the King's Court might fail in ministering Justice to Complainants.*

The Objection most insisted on, was, That this is a Matter relating to Parliaments, and ought to be determined by the Law and Custom of Parliaments; and for that reason is not cognizable in the Queen's Courts.

In Answer to this Objection, it was shewed, first, That this Case is proper in the Nature of it, to be determined in the Queen's Court.

2. There is no other Provision made for the Plaintiff, who is highly injured in his Right, but by bringing his Action in the Courts of Law, that have Power to determine of Mens Lives, Liberties and Properties.

First, The Case in the Nature of it is proper for the Queen's Courts. This will be apparent, if the several Rights of electing Members to serve in the House of Commons be considered.

The Right of chusing Knights of the Shire is founded upon the Electors Freehold. Matters of Freehold are determinable originally and primarily in the Queen's Court, by the Rules and Methods of the Common Law, by a Jury sworn, and by the Evidence of Witnesses upon Oath: And as the Right of the Freehold is determinable there, so are all Benefits, Rights and Advantages depending thereupon, or belonging thereto.

If a Freeholder's Voice be refused by a Sheriff, what is it should hinder the Queen's Court from trying and determining this Matter, like all other Questions of Freehold, by a Jury, upon the Oaths of Witnesses, or Evidence in Writing, whether the Plaintiff that supposes himself wronged was a Freeholder or not?

The Right of chusing Citizens and Burgeses depends either upon Prescription or Custom, or upon Letters Patents; these are also primarily and originally cognizable by the Queen's Courts: Customs and Prescriptions are triable by the Country, that is, by a Jury of twelve Men of that County where the Custom is alledged to be: This is known Law in all Cases without Exception.

And as to Letters Patents, if pleaded specially, the Court must judge of them; and if either Party conceives the Court hath judged amiss, he hath his Remedy by Writ of Error, 'till at last it comes where it will receive a final Judgment. So that every Right which an Elector can have, is proper for the Determination of the Queen's Courts. There are various Ways of Election in different Boroughs, but they all depend upon Charters or Customs; and therefore are not more difficult to determine than other Franchises or Liberties which depend upon the same Foundations.

And whereas it was said, That by a late Act of Parliament in the 7 & 8 W. 3. the last Determination of the House of Commons concerning the Right of Elections is to be pursued, it amounts to no more than this, That the Officer who is to make the Return is to take Care to return him to be elected, who is chosen by a Majority of Electors qualified according to the last Determination of the House of Commons; if he does so, he incurs no Danger, he is not liable to an Action, but the House of Commons it self is not bound by that Rule. Now suppose the Officer will deny a Man a Vote, who, according to the last Determination there, ought to have one, and this the Officer did well know, what is it hinders him that had Right according to that Determination from bringing his Action against the Officer who hath injured him? It cannot be the Act of Parliament, for the Queen's Courts are by Law the first and original Expounders of the Statutes of this Realm.

But secondly, There is no other Court of Jurisdiction appointed by the Law of *England* for determining the Right, and repairing this Injury, but the Courts of *Westminster*.

It is a general Rule, That whoever impeaches the Jurisdiction of one Court, must intitle some other Court to have a Jurisdiction of that Cause; but that is impossible to be done in this Case.

It was said, That the Determination of the Right of Elections of Members to serve in Parliament, is the proper Business of the House of Commons, which they would be always very jealous of; and this Jurisdiction of theirs is uncontested, That they exercise a great Power in that Matter, for they oblige the Officer to alter his Return according to their Judgment; and that they cannot judge of the Right of Election, without determining the Right of the Electors; and if Electors were at Liberty to prosecute Suits touching their Right of giving Voices in other Courts, there might be different

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Judgments, which would make Confusion, and be dishonourable to the House of Commons, and that therefore such an Action was a Breach of their Privilege.

As to these Objections, several Answers were given.

It was admitted, That the House of Commons exercise a Jurisdiction in determining the Right of Election of their own Members; and though the Time may be assign'd, when that Jurisdiction was exercised in another Place, yet there has been a Usage long enough to hinder that Point from being drawn in Question, especially after the Sanction given to it by the Act made in the Seventh Year of King William's Reign.

But tho' it be true, That the Merit of the Election of a Member be a proper Subject for the House of Commons to judge of, because they only can give the proper and most effectual Remedy, by excluding the Usurper, and giving Possession of the Place to him who has the Right; yet there is a great Difference between the Right of the Electors; and the Right of the Elect'd; the one is a Temporary Right to a Place in Parliament; *pro hac vice*, the other is a Freehold, or a Franchise: Who has a Right to sit in the House of Commons may be properly cognizable there; but who has a Right to chuse, is a Matter originally establish'd, even before there is a Parliament: A Man has Right to his Freehold by the Common Law, and the Law having annexed his Right of voting to his Freehold, it is of the Nature of his Freehold, and must depend upon it. The same Law that gives him his Right, must defend it for him, and any other Power that will pretend to take away his Right of voting, may as well pretend to take away the Freehold, upon which it depends.

To say the Plaintiff, in this Case, may apply to the House of Commons, is not sufficient, unless proved; never any single Elector of any County or Borough, did complain to the House of Commons, that he was debarr'd of his Vote, and desire them to determine his particular Right. Sometimes, some of those who have Right to chuse in a Borough have complain'd, That Persons have been return'd by the Officer, who were not duly elect'd, as being an Injury done to the whole Community of the Borough, to have a Person without Right sit there as their Representative; but this is only to bring the Merits of the Election in Question, of which that House hath Cognizance, and therefore, as incident and necessary thereto, they may try the Right of Electors, which of them, by Custom, or Letters Patents, have Voices, but this is no more than all Courts have. In the Ecclesiastical Courts, which proceed according to the Civil Law, if the Suit be originally proper for their Jurisdiction, they have Power to determine Things foreign thereto, as if Letters Patents, or Conveyances of Lands come in Question, tho' primarily and originally determinable in the Courts of Common Law. Matrimony is properly under the Jurisdiction of the Ecclesiastical Court, and if a Question arises between the supposed married Parties in their Life-time, or upon Dower or Bastardy, it shall be tried and determin'd there: But when an Action is brought by a Man and Woman, supposing her to be his Wife, if the Defendant pleads in Abatement, that they were not married, it shall be tried by a Jury where the Action was brought;

so if any one's Title to Lands depends on a Marriage, if an Action be brought to try the Title, the Marriage may be determin'd by a Jury. This shews plainly, That because the House of Commons may determine who are Electors, and who are not, incidently, and so far only, as it is necessary to try the Right of the Election, it doth not follow, that when the Right of Election is not in Question, they can try the Right of an Elector.

When the Right of the Candidate is examin'd in the House of Commons, it is in order to determine which Person hath the Right to join with them in the making of Laws, and other publick Services; and if, in order to the determining this Point, the House of Commons must judge of the Electors, they do it only to this Purpose. But the Courts of Law judge of an Elector's Right wholly to another End, as it is a legal Right, to assert that, and to repair in Damages the Elector who is wrongfully hinder'd from exercising it. This is what the House of Commons cannot do, nor to this Day was there ever any Application made to them to do it, and it may be reasonably supposed they will not now begin to take it upon them.

It commonly takes up a great Part of the Time of a Session, to determine the Cases of Elections, before they can be sure the House is composed of such as have a Right to sit; but should they once pretend to take Cognizance of particular Mens Complaints, in order to decide the Rights of Electors, it would be impossible for them to have any Leisure to employ themselves about the *Ardua & Urgentia Negotia Regni*, the Safety and Defence of the Kingdom, for which the Writ calls them together. It is granted, That the deciding of the Right of Electors is a Matter of great Weight, and in Consequence concerns the Lives and Liberties of the Subjects of *England*; but the Law hath provided a proper Remedy to be pursued in the ordinary Methods of Justice, a Remedy that is adequate, where Damages may be recover'd. The Plaintiff, in this Case, knew he had a Right by Law to give his Vote, and when he found himself deprived of it, he resorts to the Law for his Remedy: And it is probable, most of the Electors of *England* will be of his Mind, and think it for their Interest to resort to the Courts of *Westminster-Hall*, for asserting this great Right of theirs upon Occasion, where they may prove their Case by Witnesses upon Oath, and have their Damages assess'd by their Countrymen duly sworn, nothing of which can be done, if they are to seek for a Remedy in the House of Commons.

Where a Man is injured, if he cannot bring his Action to recover the Thing itself, he hath lost by the Injury, the Law will always give him Damages in Lieu thereof.

It was said in the Debate of this Case, That Instances were to be given, where the Party injured did not recover Damages, as in Case where one has a Right of Presentation, and is disturb'd, he could not recover Damages at the Common Law, and that was resembled to the Right of an Elector, which was said to be only a Right of Nomination. But the Answer to this Objection is plain, there the Law gives the Party a Remedy to recover the Presentation, the Thing that was taken from him, to which he is restored by the Judgment; but in the present Case there is



no Possibility for the Plaintiff to recover the Thing he has lost, which was his Vote at the Election, for that Election is over, and can never be had again, so that the Plaintiff cannot possibly have any Reparation, unless it be in Damages, and this Sort of Reparation the House of Commons cannot give him.

If the Plaintiff, and all other injured Electors, should be obliged to go to the House of Commons for Satisfaction, it may be reasonably supposed, the Parliament may be dissolved before it could come to his Turn to have his Cause heard; What would be the Consequence of this? If the Plaintiff must be thereby without Remedy, Would not the Law be notoriously defective? And yet none will say, that another Parliament did ever take Cognizance of any Injury done upon Account of an Election to a preceding Parliament: But suppose the next House of Commons will determine it, What endless Work would the House of Commons be engaged in? For probably, the ensuing Election would make as many new Questions as that which went before, and which the Parliament did not live long enough to dispatch.

As to what was objected, that the same Matter may come in Question in the House of Commons, where it may be determin'd, That this Plaintiff hath no Right, so that great Confusion would arise from different Judgments in different Courts, it is no more than what may happen every Day in *Westminster-Hall*, where the several Courts may be of various Opinions upon the same Question, and yet no Hurt is done to the Publick; nay, this is no more than happens often in the House of Commons, where the Right of Election in the same Borough is decided different Ways in different Parliaments, and they do not think themselves dishonour'd by it.

This Contrariety of Judgment can never appear, for the House of Commons never gives a direct Judgment on this or that individual Elector's Right; the Voting is either upon a general Question of the Competitors, or where the Right of Election in the Borough is placed, whether all Inhabitants, or those under a particular Qualification, or whether the whole Commonalty, or a selected Number have Voices, and all these are but Ways and Means to determine the Right of Election.

If the House of Commons judge of the Right of a particular Elector at any Time, it is only *pro ista vice*, so far as it relates to the particular Case before them, but surely the House never thought the Electors Freehold finally concluded thereby, because he is no Party to that Suit, his Right came not there in Question originally, but consequentially, in a Cause litigated between other Persons, to which he is no Party; and it cannot be agreeable to right Reason, or the Principles of Law, for a Man's Right to be conclusively determin'd in a Cause between other Parties.

And after all, Where is the Damage to the Publick, if there should be a Variety in the Determination of the House of Commons, and the Courts of *Westminster*? It is not impossible, in the Nature of Things, for the Courts of Law have great Advantages which the House of Commons want; they want the Help of Juries, and the Power of giving Oaths, and they ought not to be displeased with their Electors, if they resort to Courts provided with these Powers for asserting their Right of Election, especially when

it is consider'd, That the Person whose Pretensions the House of Commons approves of, will sit there, which is all they are concerned in: They are the Electors; and it would be strange if that should intitle them to challenge the sole Power of deciding the Rights of their Electors; which is indeed to chuse their Electors.

It was urged as a great Argument against the maintaining this Action, That it had been adjudged in the Case of *Mr. Onslow*, in the 33 Year of King *Charles* the Second, (second *Vent.* 37.) That no Action did lie at Common Law for a false Return of a Member to sit in Parliament; and that in the Case of *Barnardiston* and *Soame*, it was adjudged the Candidate could not maintain an Action against the Sheriff for a double Return; and if the Person elected to serve in Parliament cannot maintain an Action against the Officer, it was urged *a fortiori*, That the Person electing, who perhaps is but a Cobler, ought not to be allowed to have such an Action.

It was answered, That the Law of *England* has no respect to Persons: If an Elector be a Cobler, he is a Freeman of *England*, and has that great Privilege belonging to him to be represented in Parliament. It was remembered with what great Variety of Opinion among the Judges, that Case of *Sir Sam. Barnardiston* was determined, and what an Alarm that Judgment gave to the House of Commons, to such a Degree, that in the Session of Parliament 1679, a Committee was appointed to enquire into it as a Grievance. And it was observed, That the great Design of the Act of Parliament made in the seventh Year of the late King (which was often mentioned in the Debate of this Case to other Purposes) was to cure the many Inconveniencies arising from that Judgment, and the Judgment in *Mr. Onslow's* Case, which only followed *Barnardiston's*, and was judged upon the Authority of it. But there is no Resemblance between those Cases and the Case of an Elector. In *Barnardiston's* Case of a double Return of Members, the Reason on which the Judgment was founded, was, That a double Return was no Return which the Law took Notice of, but was only allowed of by the Custom of Parliament. When an Officer who doubts, makes a double Return, he submits to the Judgment of the House of Commons; and if that House admits of such a Return, as they had often done, it would be hard the Law should subject a Man to an Action for submitting a Matter of Fact, (the Truth of which the Officer doubts) to the Determination of those who have a Jurisdiction of the Matter, and approve the Manner of such a Return.

In the other Case of a false Return of a Member, several Reasons may be assigned for the Judgment, which are not applicable to the Case of an Elector; perhaps it might be because such a Return is a manifest Injury to every one of the Electors (tho' principally to the Candidate) and therefore it might fall within the Reason of *Williams's* Case above mentioned, That every Elector might sue him; and therefore none of them severally can maintain the Action. But there is another Reason very obvious, because the Candidate has a proper Remedy to recover his Place from which he is excluded by the false Return; the Right of Election is cognizable in the House of Commons, there he will recover



recover his Seat in Parliament, which is what the Law has the principal Regard to, and there is no Reason he should have another Remedy elsewhere.

It is absurd to say, The Electors Right of chusing is founded upon the Law and Custom of Parliament; it is an original Right, Part of the Constitution of the Kingdom, as much as a Parliament is, and from whence the Persons elected to serve in Parliament do derive their Authority, and can have no other but that which is given to them by those that have the original Right to chuse them; this doth not touch the Jurisdiction claimed and exercised by the House of Commons, to try the Right of the Election of their own Members; they who pretend to be admitted to sit there, ought to make out their Right to the House, but there is no Ground to infer from thence, that the House hath Power to try or determine the Right of other Persons who are not their Members, and do not pretend to any Place amongst them.

It was said, That if this Action were allowed, there would be a Way found out for the Lords to let themselves into to judge of the Right of the Members of the House of Commons to sit there, and by Parity of Reason to judge of their own Privileges, as if Actions were brought for Words spoken in the House of Commons, or other Things happening in that House, which would be of ill Consequence.

But it was said in the first place, That this Objection was little applicable to the present Case, because it has no Relation to the sitting of that Member, for whom the Elector who brings his Action gave his Vote.

And secondly, If things are so ordered by the Constitution of the *English* Government, that the ultimate Resort in point of Judicature is lodged with the Lords, let the Case concern what it will, when it is brought before them by Writ of Error, they are bound to give Judgment one way or other; and as to the particular Instance mentioned, relating to Words spoken in the House of Commons, it was said there never was a greater Attempt made upon Liberty of Speech in the House of Commons, than by the Information brought in the *King's-Bench*, 5 *Car. 1.* against Sir John Elliot, Denzil Holles, and Benjamin Valentine, Esquires, for Words spoke in the House of Commons; they pleaded to the Jurisdiction of the Court, as being for what was done in Parliament, and therefore ought not to be examined or punished elsewhere; but Judgment was given against them, and great Fines imposed upon them [*Cro. Car. 181.*] In the Parliament, which met in 1640, these Proceedings were taken into Consideration with great Warmth, and the 8th of July, 1641, it was resolved in the House of Commons, That the exhibiting of that Information was a Breach of the Privilege of Parliament; and that the over-ruling of the Plea to the Jurisdiction of the Court, and the Judgment, and all that followed thereupon, was against the Law and Privilege of Parliament, and many other severe Votes were passed. Thus the Matter rested 'till after the Restoration of King Charles the Second; but when Things grew to be settled, and there was Leisure to consider the Consequences of former Proceedings, the House of Commons began to think that those Votes were not to be depended upon as a sufficient Security, in a

Case of so high a Nature, since upon Liberty of Speech, all Parliamentary Debates were founded; and they could not think that great Privilege safe, while so solemn a Judgment stood in Force. Therefore, in 1667, the Consideration of this Matter took up a great part of the Session, and the best Expedient they could find out, was, first, To come to a Resolution among themselves, That the Judgment given, 5 *Car. 1.* in that Case, was an illegal Judgment, and against the Freedom and Privilege of Parliament; and then to present this Resolution of theirs to the Lords at a Conference, which was done 10 December, 1667, and to desire their Concurrence. The next Day the Lords concurred in the Resolution, and at the same time (which was a thing aimed at, and desired by the House of Commons) the Lords ordered the Lord Holles to bring a Writ of Error in Parliament, to the end there might be a judicial Determination of that great Point, which was done accordingly; and on the 15th of April, 1668, that Cause coming to be heard in Parliament, the Judgment in the *King's-Bench* was reversed, to the great Satisfaction of the House of Commons.

So little did the House of Commons entertain Jealousies of this Kind, that they themselves resorted to the Judicature of the Lords, in the Manner that has been mentioned upon so weighty an Occasion.

It was objected, that many Inconveniencies would follow, if this Action were allowed; but they were very sparing in giving particular Instances of those Inconveniencies.

But nothing is plainer than that by the Plaintiff's prevailing in this Action, great Inconveniencies will be prevented, and the Subjects Right and Property secured against the Partialities and Corruption of Officers, who are trusted in a Matter of so great Moment, as the receiving and allowing their Suffrages upon Elections.

This tends to encounter false Returns in the first Approach, and to have just Returns is all the House of Commons ought to desire.

How endless would the Inconveniencies be, if this Action did not lie? How would Occasions of Complaint be multiplied? The Officers who had the Return would become the Masters of Elections, and admit and reject Electors as they pleased with Impunity; for if the Electors are only to seek for a Remedy before the House of Commons, it would be a Remedy worse than the Disease; the greatest part of their Cases would never be determined for want of Time; and they who could get their Cases heard, could have no Amends, that is, no Damages given them for Reparation of the Wrong, besides the Absurdity of having for the most part the Parties to the Injury, those who sit by a false Return, Parties to the Judgment.

So that to deny this Action, is to deny the Benefit of the Law in a Matter of the most tender Concern to an *Englishman*.

To pretend it to be a Breach of Privilege of the House of Commons, for an Elector to seek for Remedy at Law, if he be wrongfully excluded of his Vote, is very strange.

That certainly can never be esteemed a Privilege of Parliament that is incompatible with the Rights of the People. Every *Englishman* is intitled to Reparation for the Injuries done to his Rights and Franchises in the ordinary and com-



mon Methods of Justice, where the Juries who try, and the Witnesses who give Evidence, are to be upon their Oaths. *Magna Charta, Cap. 29.* is very express. *No Freeman shall be disseised of his Freehold, or Liberties, or Free Customs, unless by the lawful Judgment of his Peers, or by the Law of the Land.*

By the *lawful Judgment of the Peers*, in the Case of a Commoner, is meant, by a Jury of lawful Men upon their Oaths.

If one be injured in such a Manner as the Plaintiff in this Action hath been, no Man can say that *per Legem Terræ*, by the Law of the Land, he can have a Remedy for Satisfaction, and asserting his Right in the House of Commons; if there be any such Law, it must be either Statute Law, or Common Law. No Statute gives him such a Remedy, nor doth the Common Law, because that is constant Usage for Time immemorial; and there is not one Precedent can be produced, that ever any Man, upon such an Occasion, did ever apply to the House of Commons for Relief.

Upon the Fourteenth Day of *January, 1703*, the House of Lords reversed the Judgment, and gave Judgment, that the Plaintiff should recover.

This State of the Case being read and approv'd of, the House came to the following Resolutions, *viz.*

**I**T is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Election of Members to serve in Parliament, and being wilfully denied or hindered so to do by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts against such Officer, to assert his Right, and recover Damages for the Injury.

**I**T is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That the asserting, that a Person having Right to give his Vote at an Election, and being hindered so to do by the Officer who ought to take the same, is without Remedy for such Wrong by the ordinary Course of Law, is destructive of the Property of the Subject, against the Freedom of Elections, and manifestly tends to encourage Corruption and Partiality in Officers, who are to make Returns to Parliament, and to subject the Freeholders, and other Electors, to their arbitrary Will and Pleasure.

**I**T is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That the declaring *Matthew Aylby* guilty of a Breach of Privilege of the House of Commons, for prosecuting an Action against the Constables of *Aylebury*, for not receiving his Vote at an Election, after he had in the known and proper Methods of Law obtain'd a Judgment in Parliament for Recovery of his Damages, is an unprecedented Attempt upon the Judicature of Parliament, and is, in Effect, to subject the Law of *England* to the Votes of the House of Commons.

**I**T is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That the deterring Electors from prosecuting Actions in the ordinary Course of Law, where they are deprived of their Right of voting, and terrifying Attornies, Solicitors, Counsellors, and Serjeants at Law, from soliciting, prosecuting, and pleading in such Cases, by voting their so doing to be a Breach of Privilege of the House of Commons, is a manifest assuming a Power to controul the Law, to hinder the Course of Justice, and subject the Property of *Englishmen* to the arbitrary Votes of the House of Commons.

The Declaration and Lenity of the House of Commons to *Aylby*, had not that Effect as might have been expected; for before the then following Sessions, not only Execution was taken out upon the said Judgment, but Mr. *Mead* brought Actions of like Nature for *John Paty*, *John Oviat*, *John Paton*, Jun. *Henry Basse*, and *Daniel Horne*, five other Inhabitants of *Aylebury*, for being denied their Votes at the Election of Members to serve in Parliament for the said Borough of *Aylebury*; of which Complaint being made to the House of Commons, they proceeded as follows.

*All the Proceedings in relation to the Aylebury-Men, committed by the House of Commons: And the Report of the Lords Journal, and Reports of the Conferences, and of the Free Conference.\**

*Martis 21 die Novembris, 1704.*

**A** Complaint being made to the House, That *Robert Mead*, an Attorney at Law, had proceeded in the Cause of *Aylby* and *White*, and others, since the last Session of Parliament, and taken the Defendants in Execution in Breach of the Privilege of this House:

*Ordered,*

That the Matter of the said Complaint be heard at the Bar of this House upon *Thursday* Morning next.

*Ordered,*

That the said *Robert Mead* do attend this House upon *Thursday* Morning next.

*Jovis 23 die Novembris, 1704.*

The Order of the Day being read for the hearing the Matter of the Complaint against *Robert Mead*, an Attorney at Law, for having proceeded in the Cause of *Aylby* and *White*, and others, since the last Session of Parliament, and taken the Defendants in Execution in Breach of the Privilege of this House:

*Ordered,*

That the Hearing the Matter of the said Complaint be adjourn'd until *Tuesday* Sevensnight.

*Ordered,*

That the said *Robert Mead* do attend this House upon *Tuesday* Sevensnight.

A further Complaint being made to the House, That since the Resolutions of this House the last Session, upon the Case of *Aylby* and *White*, there

\* *Martis 13 die Martii, 1704.* *Ordered,* That all the Proceedings in relation to the *Aylebury-Men* committed by this House, and the Report of the Lords Journal, and Reports of the Conferences, and of the Free Conference, be printed.

*Ordered,*

That Mr. Speaker do appoint the Printer of the said Proceedings and Reports.

*Paul Jodrell, Cl. Dom. Com.*

had been several new Actions brought by *John Paty*, *John Oviat*, *John Paton*, Junior, and *Henry Basse*, and prosecuted by the said *Robert Mead*, against the Constables of *Aylesbury*, in Breach of the Privilege of this House:

Ordered,

That the Matter of the said Complaint be also heard at the Bar of this House upon *Tuesday* Sevensnight.

Ordered,

That the said *John Paty*, *John Oviat*, *John Paton*, Junior, and *Henry Basse*, do attend this House upon *Tuesday* Sevensnight.

Ordered,

That Copies of the original Declarations in the said Actions be laid before this House.

*Veneris 24 die Novembris, 1704.*

Ordered,

That *Daniel Horne*, a Plaintiff in one of the Actions brought against the Constables of *Aylesbury*, of which Complaint was made to the House Yesterday, do attend this House upon *Tuesday* Sevensnight.

*Martis 5 die Decembris, 1704.*

The Orders of the Day being read for the Hearing the Matter of the Complaints of several Breaches of Privilege committed by *Robert Mead*, *John Paty*, *John Oviat*, *John Paton*, Junior, *Henry Basse*, and *Daniel Horne*, and for their attending this House: The Serjeant at Arms was called upon, to give an Account of what had been done for the Summoning of them; and he acquainted the House, That his Messenger had been at *Aylesbury*, and left a Copy of the Order at Mr. *Mead*'s House, and at his Chamber in *Thavies-Inn*, but that he does not attend; but that all the other Persons had been summoned, and do attend.

And thereupon, Mr. *Arthur Crabb* was called for, and brought in with the Mace to the Bar; who said:

That he was Attorney for the late Constables of *Aylesbury*, in five several Actions, at the several Suits of *John Paty*, *John Oviat*, *John Paton*, Junior, *Henry Basse*, and *Daniel Horne*: And that he did serve Mr. *Robert Mead*, the 6th of *March* last, with the Resolutions of this House of the last Session of Parliament, relating to the Proceedings in the Cause of *Ashby* and *White*, and others, by giving him a Copy thereof, and shewing him the Resolutions sign'd by the Clerk of this House: And that he afterwards, viz. the 10th of *June* last, had from Mr. *Mead* Copies of five Declarations in the said Actions, viz. one from Mr. *Mead* himself, and the other four left at his House, which Mr. *Mead* afterwards own'd, and that he paid Mr. *Mead* for them all.

Which Copies of Declarations the said Mr. *Crabb* produced to the House, together with Notice in Writing from the said Mr. *Mead*, the 22d of *July* last, That he would try one of the said Actions, but not the other four, at the then next Assizes.

And then he withdrew.

And the Notice was read.

And the Copy of the Declaration between *Paty* and *White* & al<sup>†</sup> was also read, and is as followeth. †

*Pasche Anno Tertio Annæ Regine.*

**Bucks** ff. *J*ohannes Paty queritur de Will'o White Ric'o Talboys Will'o Bell & Ricardo Heydon in Custod' Mar' &c. pro eo viz. quod cum vicesimo sexto die Decembris Anno Regni Dom' Williel' Tertij nuper Regis Ang' &c. duodecimo e Cur' Cancellar' ipsius nuper Regis apud Westm' in Com' Mid' emanavit quoddam Breve ipsius nuper Regis tunc Vic' Com' Bucks pred' direct' recitando quod dict' nuper Rex de advisamento & assensu Concilij sui pro quibusdam arduis & urgentibus negotijs eund' nuper Regem Statum & Defensionem Regni sui Ang' & Ecclesie Anglicane concernen' quoddam Parliamentum suum apud Civitat' suam Westm' sexto die Februarij tunc prox' futur' teneri ordinavit & ibidem cum Prelatis Magnatibus & Proceribus dicti Regni sui colloquium habere & tractatum Idem nuper Rex eidem tunc Vic' Com' Bucks predict' Breve precepit firmiter injungend' quod facta Proclamatione in prox' Com' suo post reception' ejusd' Brevis tenend' de die & loco predict' duos Milites Gladijs cinctos magis idoneos & discretos Com' pred' & de qualibet Civitate Com' illius duos Cives & de quolibet Burgo duos Burghenses de discretioribus & magis sufficien' libere & indifferenter per illos qui hujusmodi Proclamation' interforent juxta form' Statut' inde edit' & provis. eligi & nomina eorundem Militum Civium & Burghensium sic eligend' in quibusdam Indentur' inter ipsum tunc Vic' & illos qui hujusmodi Election' interforent inde conficiend' licet hujusmodi eligend' presentes forent vel absentes inferi eosq; ad dictos diem & locum venire faceret Ita quod iidem Milites plenam & sufficien' Potestatem pro se & Communitate Com' illius ac dicti Cives & Burghenses pro se & Communitate Civitat' & Burgor' pred' divisim ab ipsis haber' ad faciend' & consentiend' hijs que tunc ibidem de Communi Concil' dicti Regni ipsius nuper Regis (favente Deo) contingerent ordinari super negotijs antedictis Ita quod pro defectu potestatis hujusmodi seu propter improvidam Election' Militum Civium aut Burghensium pred' dicta negotia infecta non remaneret quovismodo & Election' ill' in plen' Com' ipsius tunc Vic' fact' distincte & aperte sub Sigillo suo & Sigillis eorum qui Election' ill' interforent eidem nuper Regi in tunc Cancellar' sua ad dict' diem & locum certificaret indilate remitten' eidem nuper Regi alteram partem Indentur' pred' eidem Brevi cons' una cum Brevi illo. Quod quidem Breve postea & ante predictum sextum diem Febr' in Brevi pred' mentionat' scil' vicesimo nono die Decemb' Anno duodecimo sup' dicto apud Burgum de Aylesbury in dicto Com' Bucks cuidam Roberto Weedon Arm' ad tunc Vic' ejusd' Com' Bucks deliberat' fuit in forma Juris exequend' Virtute cujus quidem Brevis predictus Robertus Weedon Vic' Com' Bucks pred' ut prefertur tunc & ibidem existen' postea & ante predict' sextum diem Februar' scil' tricesimo die Decemb' Anno duodecimo sup' dicto apud Burgum de Aylesbury pred' in dicto Com' Bucks fecit quoddam preceptum suum in Scriptis sub Sigillo ipsius Roberti Weedon Officij sui Vic' Com' Bucks pred' Constabular' Burgi de Aylesbury pred' direct' (recitand' diem & locum Parliamenti pred' tenend') perinde eos

† This Declaration of *Paty*, relates to the Election of Members to serve in the Parliament called in the 12th Year of his late Majesty's Reign.



requiren' & eis in mandato dans quod facta Proclamatione infra Burg' pred' de die & loco in eodem Precepto recitat' causarent libere & indifferenter eligi duos Burgenes Burgi ill' de discretioribus & magis sufficien' per ipsos qui hujusmodi Proclamatione interforent juxta form' Statut' in talib' casub' edit' & provis' & nom' dictor' Burgen' sic elect' licet presentes forent vel absentes inferi in quibusc' Indentur' inter dictum Vic' & illos qui haberent interesse in hujusm' Election' & quod eos venire facerent ad diem & locum in eodem precept' recitat' Ita quod dicti Burgenes haberent plen' & sufficien' potestat' pro se & Communitate Burgi pred' ad faciend' & consentiend' ijs que tunc ibidem de com' Concilio dicti Regni (favente Deo) contingerent ordinari sup' negotiis antedict' Ita quod pro defectu hujusmodi potestat' aut propter improvidam Election' Burgenium pred' dicta negotia infecta non remaner' Et quod Election' indilate eidem tunc Vic' certificarent mittend' eidem Vic' alteram partem Indentur' predict' Precept' annex' ut idem Vic' eandem certificaret dicto nup' Regi in Cancellar' sua ad diem & locum predict' Quod quidem Preceptum postea & ante predict' sextum diem Februarij scil' eodem tricesimo die Decemb' Anno duodecimo sup' dict' apud Burgum de Aylesbury pred' in dicto Com' Bucks eisdem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon ad tunc & usque ad & post retorn' ejusdem Brevis Constabular' Burgi de Aylesbury predict' existen' in forma Juris exequend' deliberat' fuit quibus quidem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon ratione Officij sui pred' Constabular' Burgi pred' executio Precepti ill' de jure ad tunc & ibid' pertinuit Virtute cujus quidem Precepti ac Vigore Brevis pred' Burgenes Burgi pred' existen' in ea parte debite premoniti postea & ante predict' sextum diem Februarij scil' sexto die Jan' Anno duodecimo sup' dicto apud Burgum de Aylesbury pred' coram eisdem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon Constabular' Burgi predict' assemblat' fuer' ad duos Burgenes pro Burgo ill' eligend' secund' exigentiam Brevis & Precepti pred' ac duran' assemblation' ill' ad intention' ill' & antequam hujusmodi duo Burgenes Virtute Brevis & Precepti pred' electi fuer' scil' die & Anno ult' sup' dict' apud Burg' de Aylesbury pred' in Com' pred' idem Johannes Paty ad tunc & ibidem existen' Burgen' & Inhabitan' Burgi predict' & Eleemozinas ibidem non recipien' sed debite qualificat' & intitulat' existen' ad suffragium suum ad eligend' duos Burgenes pro Burgo pred' secundum exigentiam Brevis & Precepti pred' dand' coram eisdem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon quatuor Constabular' Burgi ill' quibus tunc & ibidem debite pertinuit ad Suffragium ipsius Johannis Paty de & in premissis capiend' & allocand' parat' fuit & obtulit suffragium suum dare pro eligend' Thomam Lee Bar' & Simon Mayne Ar' duos Burgenes pro Parlamento ill' Virtute & secundum exigentiam Brevis & Precepti pred' ac suffragium ipsius Johannis Paty ad tunc & ibidem de jure debuit admitti & pred' Will'us White Ric'us Talboys Will'us Bell & Ric'us Heydon sic Constabular' Burgi pred' tunc & ibidem existen' ad tunc & ibidem requisit' fuer' per ipsum Johan' Paty ad suffragium ipsius Johan'

Paty pred' in premissis recipiend' & allocand' iidem tamen Will'us White Ric'us Talboys Will'us Bell & Ric'us Heydon ad tunc & ibidem ut prefertur Constabular' Burgi pred' existen' premissorum non ignari sed machinan' & fraudulent' & malitiose intenden' eundem Johan' Paty in hac parte dampnificare & de Privilegio suo de & in premissis pred' impedite & totalit' frustrare eundem Johan' Paty suffragium suum in ea parte dare ad tunc & ibidem obstruere & ad tunc & ibidem penitus recusaver' ad eundem Johan' Paty suffragium suum pro eligend' duos Burgenes pro Burgo ill' ad Parliament' pred' dare permittend' ac suffragium ipsius Johan' Paty pro Electione ill' non receper' neq' allocaver' Ac duo Burgenes de Burgo ill' pro Parliament' pred' (predicto Johanne Paty sic ut prefertur exclus') sine aliquo suffragio ipsius Johannis Paty ad tunc & ibidem Virtute Brevis & precepti pred' electi fuer' in enervation' pred' Privileg' pred' Johannis Paty de & in premissis pred' Unde idem Johannes Paty dicit quod ipse deteriorat' est & dampnum habet ad valentiam ducentar' lib' ac inde producit Secutam &c.

J. Tomson pro Quer. } Pleg' &c.  
Crab per Ja. Close pro Def.

The other Declarations were :

<i>Johannes Oviat,</i> <i>Johannes Paton, Jun.</i> <i>Henry Basse,</i> <i>Daniel Horne,</i>	}	Versus	{	<i>Thoma' Ray &amp;</i> <i>al' Constabular' Burgi de</i> <i>Aylesbury.</i>
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And, *mutatis mutandis*, were the same with the former Declarations against *White* and others §.

Then the said *John Paty, John Oviat, John Paton, Junior, Henry Basse,* and *Daniel Horne*, were severally called into the Bar, and examined, and then withdrew.

*Resolved,*

That it appears to this House, That *John Paty* of *Aylesbury* has been guilty of commencing and prosecuting an Action at Common Law against *William White*, and others, late Constables of *Aylesbury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

*Resolved,*

That it appears to this House, That *John Oviat* of *Aylesbury* has been guilty of commencing and prosecuting an Action at Common Law against the late Constables of *Aylesbury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

*Resolved,*

That it appears to this House, That *John Paton, Junior*, of *Aylesbury*, has been guilty of commencing and prosecuting an Action at Common Law against the late Constables of *Aylesbury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdic-

§ These Declarations relate to the Election of Members to serve in the Parliament called in the First Year of her present Majesty's Reign,

tion, and in Breach of the known Privileges of this House.

*Resolved,*

That it appears to this House, That *Henry Basse* of *Aylesbury*, has been guilty of commencing and prosecuting an Action at Common Law against the late Constables of *Aylesbury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

*Resolved,*

That it appears to this House, That *Daniel Horne* of *Aylesbury*, has been guilty of commencing and prosecuting an Action at Common Law against the late Constables of *Aylesbury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

*Resolved,*

That it appears to this House, That *Robert Mead* has been guilty of soliciting and prosecuting (as Attorney at Law) divers Actions at Common Law against *William White* and others, late Constables of *Aylesbury*, for not allowing divers Votes in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the Privileges of this House.

*Ordered,*

That the said *John Paty* be, for his said Offence, committed Prisoner to her Majesty's Goal of *Newgate*; and that Mr. Speaker do issue his Warrant accordingly.

*Ordered,*

That the said *John Oviat* be, for his said Offence, committed Prisoner to her Majesty's Goal of *Newgate*; and that Mr. Speaker do issue his Warrant accordingly.

*Ordered,*

That the said *John Paton Junior* be, for his said Offence, committed Prisoner to her Majesty's Goal of *Newgate*; and that Mr. Speaker do issue his Warrant accordingly.

*Ordered,*

That the said *Henry Basse* be, for his said Offence, committed Prisoner to her Majesty's Goal of *Newgate*; and that Mr. Speaker do issue his Warrant accordingly.

*Ordered,*

That the said *Daniel Horne* be, for his said Offence, committed Prisoner to her Majesty's Goal of *Newgate*; and that Mr. Speaker do issue his Warrant accordingly.

*Ordered,*

That the Serjeant at Arms attending this House do take care that the said Warrants be executed.

*Ordered,*

That the said *Robert Mead* be, for his said Offence, taken into the Custody of the Serjeant at Arms attending this House.

\* What incensed the Commons yet more, was the Behaviour of *John Paty* and *John Oviat*, two of the Prisoners, who thinking themselves wronged in their being remanded to *Newgate*, humbly petitioned the Queen for a Writ of Error, in order to bring the Judgment of the Court of *Queen's-Bench* before her Majesty in Parliament. The Commons were no sooner informed of these Petitions, but they made the above Votes. *Annals of Queen Anne*, Vol. 3. p. 188.

*Jovis 1 die Februarii, 1704.*

*Ordered,*

That the Keeper of *Newgate* do to morrow Morning bring to this House *John Paty*, *John Oviat*, *John Paton Junior*, *Henry Basse*, and *Daniel Horne*, committed by this House; and that Mr. Speaker do issue his Warrant or Warrants accordingly.

*Veneris 2 die Februarii, 1704.*

The House being informed, That the Keeper of *Newgate* attended (according to Order) with *John Paty*, *John Oviat*, *John Paton Junior*, *Henry Basse*, and *Daniel Horne*, committed by this House; several of them were severally called in and examined, and then withdrew.

And also the Keeper and his Clerk, and Turnkey, and one *Edward Hill*, were called in and examined, and then withdrew.

*Ordered,*

That the said *John Paty*, *John Oviat*, *John Paton Junior*, *Henry Basse*, and *Daniel Horne*, be remanded Prisoners to her Majesty's Prison of *Newgate*; and that Mr. Speaker do issue his Warrants accordingly.

*Sabbati 24 die Februarii, 1704.*

The House being informed, That there have been Endeavours to bring a Writ of Error on the Proceedings in the Court of *Queen's-Bench*, upon a *Habeas Corpus* granted there for the Persons committed by this House to *Newgate* for Breach of their Privilege, and thereby to bring the Commitments of this House under the Examination of the House of Peers \*:

*Resolved,*

That an humble Address be presented to her Majesty, humbly to lay before her Majesty the undoubted Right and Privilege of the Commons of *England*, in Parliament assembled, to commit for Breach of Privilege; and that the Commitments of this House are not examinable in any other Court whatsoever: And that no such Writ of Error was ever brought, nor doth any Writ of Error lie in this Case. And that as this House hath expressed their Duty to her Majesty, in giving Dispatch to all the Supplies, so they have an entire Confidence in her Majesty's Goodness and Justice, That she will not give Leave for the bringing any Writ of Error in this Case; which will tend to the overthrowing the undoubted Rights and Privileges of the Commons of *England*.

*Ordered,*

That the said Address be presented to her Majesty by such Members of this House as are of her Majesty's most Honourable Privy Council.

*Resolved,*

That whoever has abetted, promoted, countenanced, or assisted the Prosecution of the several Writs of *Habeas Corpus*, brought for the Prisoners committed by this House, and since their being remanded have endeavoured the procuring Writs of Error, are guilty of conspiring to make



a Difference between the Lords and Commons in Parliament assembled, are Disturbers of the Peace of the Kingdom, and have endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons of England in Parliament Assembled.

*Ordered,*

That a Committee be appointed to examine what Persons have been concerned in soliciting, prosecuting, or pleading, upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Persons committed to *Newgate* for Breach of the Privilege of this House; or what other Persons have promoted or abetted the same.

And a Committee was accordingly appointed; and that they do meet this Afternoon, as soon as the House is risen, in the Speaker's Chamber, and have Power to send for Persons, Papers, and Records; and to sit *de die in diem*.

*Lune 26 die Februarii, 1704.*

Mr. Secretary *Hedges* acquainted the House, That their Address of *Saturday* last, in relation to the Writs of Error therein mentioned, having been presented to her Majesty, according to Order, her Majesty was pleased to give this gracious Answer; viz.

*Her Majesty is much troubled to find the House of Commons of Opinion, That her granting the Writs of Error, mentioned in their Address, is against their Privileges, of which her Majesty will always be as tender as of her own Prerogative; and therefore the House of Commons may depend, her Majesty will not do any thing to give them any just Occasion of Complaint: But this Matter, relating to the Course of judicial Proceedings, being of the highest Importance, her Majesty thinks it necessary to weigh and consider very carefully what may be proper for her to do in a thing of so great a Concern.*

*Resolved,* That this House will take her Majesty's Gracious Answer into Consideration to morrow Morning.

The Earl of *Dyset* reported from the Committee appointed to examine what Persons have been concerned in soliciting, prosecuting, or pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Persons committed to *Newgate* for Breach of the Privileges of this House, or what other Persons have promoted or abetted the same, the Matter as it appeared to them; which they had directed him to report to the House, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and is as followeth.

Upon the Examination of several Persons, it appeared to the Committee, That Mr. *Alexander Denton* (afterwards Mr. Justice *Denton*) moved in the Court of *Queen's-Bench* for the Writs of *Habeas Corpus*, on behalf of the Persons committed to *Newgate* for Breach of the Privileges of this House\*.

That Mr. Serjeant *Hook* moved in the Court of *Queen's-Bench*, to shorten the Day for the Return of the said Writs.

That Mr. *Francis Page* (afterwards Mr. Justice *Page*) Mr. *James Mountague*, Mr. *Nicholas Lech-*

*mere*, and Mr. *Alexander Denton*, pleaded on the Returns of the said Writs.

That Mr. *James Mountague* (late Lord Chief Baron) and Mr. *Nicholas Lechmere* (late Lord *Lechmere*) attended as Council at the Lord Chief Justice *Holt's* Chamber, to consider what Entry should be made of the *Remittitur*.

*Hollingshead*, a Messenger attending this House, informed the Committee, That he endeavoured to serve the Summons upon Mr. *Lee* of *Clement's Inn*; but not meeting with him, he shewed his Clerk the original Order of Summons, which his Clerk refused to read; thereupon he offered him a Copy of it, which he refused to receive: However, he left the Copy in Mr. *Lee's* Chamber.

*Kingham*, another Messenger, informed the Committee, He had personally served ——— *Harris* with the Order of Summons, and he said he would attend: But neither *Lee* nor *Harris* attended the Committee according to the Summons of the Committee.

*Resolved*, That it appears to this House, That Mr. *Lee*, of *Clement's Inn*, having been summoned to attend a Committee of this House, and not attending thereupon, is guilty of a Contempt and Breach of the Privilege of this House.

*Ordered*, That the said Mr. *Lee* be, for his said Contempt and Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

*Resolved*, That it appears to this House, That ——— *Harris* having been summoned to attend a Committee of this House, and not attending thereupon, is guilty of a Contempt and Breach of the Privilege of this House.

*Ordered*, That the said ——— *Harris* be, for his said Contempt and Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

A Motion being made, and the Question being put, That the farther Consideration of the said Report be adjourned till to morrow Morning:

It passed in the Negative.

Then a Debate arising upon the said Report, and the Time being come for the House to attend her Majesty, as she had appointed, with an Address:

*Resolved*, That the Debate be adjourned.

*Resolved*, That the Debate be adjourned till Six a Clock in the Evening.

*Post Meridiem.*

The House resumed the adjourned Debate upon the Report from the Committee appointed to examine what Persons have been concerned in soliciting, prosecuting, or pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Persons committed to *Newgate* for Breach of the Privilege of this House; or what other Persons have promoted or abetted the same.

*Resolved*, That Mr. *Francis Page*, in pleading upon the Return of the *Habeas Corpus*, on behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

*Ordered*, That the said Mr. *Francis Page* be, for the said Breach of Privilege, taken into the

\* The Arguments on the *Habeas Corpus* are inserted after these Proceedings, that there may be no Interruption in the Proceedings of the House of Commons.

Custody of the Serjeant at Arms attending this House.

*Resolved*, That Mr. *James Mountague*, in pleading upon the Return of the *Habeas Corpus*, on the behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

*Ordered*, That the said Mr. *James Mountague* be, for the said Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

*Resolved*, That Mr. *Nicholas Lechmere*, in pleading upon the Return of the *Habeas Corpus*, on the behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

*Ordered*, That the said Mr. *Nicholas Lechmere* be, for the said Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

*Resolved*, That Mr. *Alexander Denton*, in pleading upon the Return of the *Habeas Corpus*, on the behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

*Ordered*, That the said Mr. *Alexander Denton* be, for the said Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

*Ordered*, That *John Paty*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Serjeant at Arms attending this House.

*Ordered*, That *John Oviat*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Serjeant at Arms attending this House.

*Ordered*, That *John Paton Junior*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Serjeant at Arms attending this House.

*Ordered*, That *Henry Basse*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Serjeant at Arms attending this House.

*Ordered*, That *Daniel Horne*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Serjeant at Arms attending this House.

*Ordered*, That Mr. Speaker do issue his Warrants for the Removal and Delivery over of the said *John Paty*, *John Oviat*, *John Paton Junior*, *Henry Basse*, and *Daniel Horne*, into the Custody of the Serjeant at Arms attending this House. \*

*Martis 27 die Februarii, 1704.*

The House calling upon the Serjeant to give an Account what he had done in Execution of

the Orders of this House made Yesterday, he gave the House an Account thereof accordingly, as followeth, *viz.*

That he had received into his Custody the five Persons which were committed to *Newgate*, this Morning, and had found Mr. *James Mountague* at his own House, and taken him into his Custody; but that he shewed a Protection from the House of Lords, upon the Petition of the said Persons, by which the said Mr. *Mountague* and Mr. *Page*, Mr. *Lechmere* and Mr. *Denton*, and *William Lee* and *John Harris* (who were Yesterday ordered to be taken into Custody) were assigned Council and Attornies for the said Persons, and protected by the House of Lords; and that all Officers, Serjeants at Arms, and other Persons, were thereby forbid to meddle with them; with which Mr. Serjeant told Mr. *Mountague* he would acquaint this House.

That he had also like to have taken Mr. *Nicholas Lechmere*, but that he got out of his Chamber in the *Temple*, two Pair of Stairs high, at the back Window, by the help of his Sheets and a Rope; and that the said *Harris* was also taken into Custody; but that Mr. *Page* and Mr. *Denton*, and Mr. *Lee*, were not then found.

*Ordered*, That some Members be appointed to search the Journals of the House of Lords, what Proceedings have been in that House, in relation to the five Persons committed to *Newgate* for Breach of the Privilege of this House; and report the same to the House.

And some Members were appointed accordingly.

The Orders of the Day being read :

*Ordered*, That the Consideration of her Majesty's Gracious Answer to the Address of this House of *Saturday* last, relating to the Writs of Error therein mentioned, be adjourned till to morrow Morning.

*Mercurii 28 die Februarii, 1704.*

Mr. *Bromley* reported, That the Members appointed to search the Journals of the House of Lords, what Proceedings have been in that House, in relation to the five Persons committed to *Newgate* for Breach of the Privilege of this House, had searched the same accordingly, and had taken thereout what they found relating to the same; and also Copies of two Petitions of the said Persons; which he read in his Place, and afterwards delivered in at the Table, where the same were read, and are as follow, *viz.*

*Die Lune 26 Februarii, 1704.*

Upon reading the Petition of *Daniel Horne*, *Henry Basse*, and *John Paton Jun.* as also the Petition of *John Paty*, and *John Oviat*, Prisoners in *Newgate*, in relation to some Proceedings for obtaining the Writs of Error, and praying (amongst other Things) the Protection of this House for their Council and Agents :

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the said Petitions shall be taken into Consideration to Morrow at Twelve o'Clock, and all the Lords summoned to attend; as also the Judges in

\* Tho' the Commons had resolved before to take Her Majesty's Answer into Consideration, yet being apprehensive lest Her Majesty should grant the Writs of Error, whereby the Five *Aylesbury-Men* might be discharged from their Imprisonment, they ordered them to be removed from *Newgate*, and taken into the Custody of their Serjeant at Arms; which Order was executed at Midnight, with such Circumstances of Severity and Terror, as have been seldom exercised towards the greatest Offenders.

*Annals of Queen Anne*, Vol. 3. p. 189.



Town, who are to come prepared to speak to the Point, Whether a Writ of Error be a Writ of Right, or a Writ of Grace? And that the Petitioners have Notice, That when they send to this House the Names of their Council and Agents they desire to be protected, they shall have the Protection of this House for them.

In Pursuance of the Order of this Day made, Daniel Horne, Henry Basse, John Paton, Jun. John Paty, and John Oviat, Prisoners in Newgate, sent the Names of their Council and Agents, viz.

James Mountague, Esq; }  
Nicholas Lechmere, } Counsellors at Law.  
Alexander Denton,  
Francis Page,

William Lee, }  
John Harris, } Attornies at Law.

Whereupon,

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That James Mountague, Esq; Nicholas Lechmere, Alexander Denton, and Francis Page, Counsellors at Law, and William Lee, and John Harris, Attornies at Law, shall, and they have hereby the Protection and Privilege of this House, in the advising, applying for, and prosecuting the said Writs of Error; and that all Keepers of Prisons, and Goalers, and all Serjeants at Arms, and other Persons whatsoever, be, and they are hereby (for, or in respect of any the Causes aforesaid) strictly prohibited from arresting, imprisoning, or otherwise detaining or molesting, or charging the said James Mountague, Esq; Nicholas Lechmere, Alexander Denton, Francis Page, William Lee, and John Harris, or either of them; as they and every of them will answer the contrary to this House.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament Assembled.

The humble Petition of Daniel Horne, Henry Basse, and John Paton, Jun.

Sheweth,

THAT your Petitioners having a Right to Vote at the Election of Members to serve in Parliament for the Borough of *Aylesbury*, were refused their Votes, to their great Wrong and Damage.

That the Lords having given Judgment in the Case of *Ashby and White*, viz. That by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Election of Members to serve in Parliament, and being wilfully denied or hindered so to do by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts against such Officer, to assert his Right, and recover Damages for the Injury; your Petitioners thereupon brought the like Actions in their own Cases.

That they have for so doing been committed to *Newgate*, by Virtue of a Warrant from the Speaker of the House of Commons.

That your Petitioners have endeavoured to obtain their Liberty by such legal Methods as by their Council they have been advised, without Success; so that they have been deprived of their Liberty for about Twelve Weeks, for no other Reason, but the endeavouring to pursue their le-

gal Remedies, according to the Judgment of this Honourable House.

Wherefore your Petitioners humbly beseech your Lordships to take the Premises into Consideration, and to do therein as to your great Wisdoms you shall think fit.

And your Petitioners, as in Duty bound, shall ever pray, &c.

Daniel Horne,  
Henry Basse,  
John Paton, Jun.  
His + Mark.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament Assembled.

The humble Petition of John Paty, and John Oviat.

Sheweth,

THAT your Petitioners having Right to Vote at the Election of Members to serve in Parliament for the Borough of *Aylesbury*, were refused their Votes, to their great Wrong and Damage.

That the Lords having given Judgment in the Case of *Ashby and White*, viz. That by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Election of Members to serve in Parliament, and being wilfully denied or hindered so to do by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts against such Officer, to assert his Right, and recover Damages for the Injury; your Petitioners thereupon brought the like Actions in their own Cases.

That they have for so doing been committed to *Newgate*, by Virtue of Warrants from the Speaker of the House of Commons, Copies whereof are annexed.

That they did, by the Advice of their Council, on the 5th Day of this Instant *February*, move for their Writs of *Habeas Corpus*, directed to the Keeper of *Newgate*, to bring your Petitioners before Her Majesty's Court of *Queen's Bench*: Whereupon, the said Court, viz. Mr. Justice *Powell*, Mr. Justice *Powys*, and Mr. Justice *Gould*, did grant the said Writs, directing the same to be made returnable on the 10th Day of *February* aforesaid, notwithstanding that your Petitioners said Council did insist, That the same was an unusual Return, and prejudicial to your Petitioners; on which said Day of Return, your Petitioners Council did argue on their Behalf, That by Law they ought to be discharged; but by the Opinion of the said three Judges, they were remanded to the said Prison.

That your Petitioners being thereupon advised, there was a manifest Error in the said Judgment, and that they were properly relievable by bringing a Writ of Error returnable before Her Majesty in this High Court of Parliament, they did severally exhibit their Petitions to Her Majesty, setting forth the Proceedings upon the said Writs of *Habeas Corpus*; and humbly pray'd, That a Writ of Error might be granted to them respectively returnable in this High Court.

That your Petitioners have not been able as yet to obtain Her Majesty's Warrant for authorising the Curitor to make out the said Writs of Error, as is usual in such Cases.

That

That your Petitioners being advised, That a Writ of Error is a Writ of Right, do humbly beseech your Lordships to take the Premises into Consideration, and to give such Directions thereupon, as to your Lordships shall seem just: And your Petitioners do further pray, That your Lordships will be pleased to give the Protection of this House to your Petitioners Council and Agents, employed by them in the advising, applying for, and prosecuting the said Writs of Error; without which, they refuse to assist your Petitioners.

And your Petitioners, as in Duty bound, shall ever pray, &c.

John Paty,  
His H Mark.  
John Oviat,  
His O Mark.

The Dates of the Warrants annexed to the Petition.

Martis 5 die Decembris, 1704. for John Oviat.  
Veneris 2 die Februarii, 1704. Ditto.  
Martis 5 die Decembris, 1704. for John Paty.  
Veneris 2 die Februarii, 1704. Ditto.

The Serjeant at Arms being called upon to give an Account what he had done pursuant to the Orders of the House of Monday last, since the Account he gave Yesterday:

He gave the House an Account accordingly; That he had found Mr. Denton at his own Chamber, and had him in Custody; but that he could not find the other Persons.

A Message from the Lords, by Mr. Justice Tracy, and Mr. Baron Smith.

Mr. Speaker. The Lords desire a present Conference with this House in the Painted Chamber, about some antient fundamental Liberties of the Kingdom.

Resolved, That this House doth agree to meet the Lords at a present Conference as desired.

And the Messengers were called in again, and Mr. Speaker acquainted them therewith.

Then Managers were appointed, who went to the Conference.

And being returned,

The Lord Marquis of Hartington reported the Conference, and that it was managed by the Earl of Sunderland, who expressed himself as followeth:

That the Lords have desired this Conference with the House of Commons, in order to a good Correspondence between the Two Houses, which they will always endeavour to preserve. When either House of Parliament have apprehended the Proceedings of the other to be liable to Exception, the antient Parliamentary Method has been to ask a Conference, it being ever supposed, that when the Matters are fairly laid open, and debated, that which may have been amiss, will be rectified, or else the House that made the Objections will be satisfied, that their Complaint was not well grounded.

Such Hopes as these have induced the Lords to command us to acquaint you, That upon Consideration of the Petition of Daniel Horne, Henry Basse, and John Paton, Junior, and also of the Petition of John Paty, and John Oviat, complaining to the House of Lords, That they have been Prisoners in Newgate for about Twelve Weeks, upon several

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Warrants, signed by the Speaker of the House of Commons, bearing Date the 5th of December last, for their having commenced and prosecuted Actions at Common Law, against the late Constables of Aylesbury, for not allowing their Votes, at an Election of Members to serve in Parliament; which Actions, they alledged, they were encouraged to bring by reason of a Judgment given in Parliament upon a Writ of Error brought in the last Session by one Ashby against White, and others; and also representing by the same Petitions, what had been done by them respectively since their said Commitment, in order to obtain their Liberty, and praying the Consideration of the House of Peers upon the whole Matter; and also upon Consideration of a printed Paper, entitled, The Votes of the House of Commons, signed with the Speaker's Name, and dated the 24th of this Instant February; the House of Lords found themselves obliged to come to several Resolutions, which they have commanded us to communicate to you at this Conference; and are as follows:

1. "It is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That neither House of Parliament hath any Power, by any Vote, or Declaration, to create to themselves any new Privilege that is not warranted by the known Laws and Customs of Parliament.

Resolved,

2. "That every Freeman of England, who apprehends himself to be injured, has a Right to seek Redress by Action at Law; and that the Commencing and Prosecuting an Action at Common Law, against any Person, (not entitled to Privilege of Parliament,) is no Breach of the Privilege of Parliament.

Resolved,

3. "That the House of Commons, in committing to Newgate, Daniel Horne, Henry Basse, and John Paton, Junior, John Paty and John Oviat, for Commencing and Prosecuting an Action at Common Law, against the late Constables of Aylesbury, for not allowing their Votes in Election of Members to serve in Parliament, upon Pretence that their so doing was contrary to a Declaration, a Contempt of the Jurisdiction, and a Breach of the Privilege of that House, have assumed to themselves alone a Legislative Authority, by pretending to attribute the Force of a Law to their Declaration, have claimed a Jurisdiction not warranted by the Constitution, and have assumed a new Privilege, to which they can shew no Title by the Law and Custom of Parliament; and have thereby, as far as in them lies, subjected the Rights of Englishmen, and the Freedom of their Persons, to the arbitrary Votes of the House of Commons.

Resolved,

4. "That every Englishman, who is imprisoned by any Authority whatsoever, has an undoubted Right, by his Agents, or Friends, to apply for, and obtain a Writ of Habeas Corpus, in order to procure his Liberty by due Course of Law.

Resolved,

5. "That, for the House of Commons to censure, or punish any Person, for assisting a Prisoner to procure a Writ of Habeas Corpus, or by Vote, or otherwise, to deter Men from soliciting,



"soliciting, prosecuting, and pleading upon such  
 "Writ of *Habeas Corpus*, in Behalf of such  
 "Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes  
 "provided for the Liberty of the Subject, and  
 "of pernicious Example, by denying the necessary Assistance to the Prisoner, upon a Commitment of the House of Commons, which  
 "has ever been allowed upon all Commitments  
 "by any Authority whatsoever.

*Resolved,*

6. "That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for, (though at the Request of either House of Parliament,) the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta*.

*In these Resolutions, the House of Lords have expressed that Regard and Tenderness which they have always had, and will ever maintain for the Rights of the People of England, and for the Liberties of their Persons; and also their Zeal against all Innovations to the Prejudice of the known Course of Law, whereupon the Happiness of our Constitution does depend: And they hope that, upon Recollection, the House of Commons will be of the same Opinion in all the Particulars Resolved by the Lords, and agree with their Lordships therein.*

*Ordered,*

That the said Report be taken into Consideration To-morrow Morning.

*Jovis 1 Die Martii, 1704.*

The House, (according to Order,) proceeded to take into Consideration the Report from the Conference with the Lords Yesterday.

*Ordered,*

That it be referred to the Managers that managed the last Conference, to draw up what is proper to be offered to the Lords at the next Conference; and that they do withdraw into the Speaker's Chamber, and do Sit *de Die in Diem*, and have Power to send for Persons, Papers, and Records.

*Sabbati 3 Die Martii, 1704.*

The Earl of *Dysert* reported from the Committee appointed to examine what Persons have been concerned in soliciting, prosecuting, or pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the Behalf of the Persons committed to *Newgate* for Breach of the Privileges of this House, or what other Persons have promoted or abetted the same; That upon the Examination of Witnesses, it appeared to the Committee, That one Mr. — *Clifton*, being summoned to attend the said Committee, did not appear, tho' his Wife owned he had the said Summons, and told her he would attend accordingly. Mr. *Smith*, one of the Officers of the Prison of *Newgate*, said, That the said Mr. *Clifton* used to come often to the Prison, to visit the five Prisoners committed thither by this House; and he has received of him about fifteen Pounds for their Lodging, and about five Pounds more of the Turnkey, that has been left with him upon the same Account, by Persons unknown to him. That there is nothing owing for their Lodging, but since *Saturday Night*: That they paid fifty Shillings per Week for their Lodging, and used to provide their Diet from the *Sutler's*.

And that the Committee having issued out several Summons for Mr. *Henry Cesar*, one of the Curfitors of *London* and *Middlesex*, to attend them, in order to give the Committee an Account what Persons had applied to him to make out Writs of Error on the Behalf of *John Oviat*, and the other Prisoners lately committed by this House to *Newgate*: It appeared, (upon the Examination of *Kingham* the Messenger, who served the said Summons) That he left a Copy of the Summons on *Tuesday Night* at Mr. *Cesar's* Chamber at *Symonds-Inn*, with his Laundress, he not being within. That the said Messenger, since, left a second Summons at the said Mr. *Cesar's* Chamber, who has not obeyed the same.

And a Debate arising in the House upon the said Report;

And a Motion being made, and the Question being put, That the Debate be adjourned?

It passed in the Negative.

*Resolved*, That it appears to this House, That Mr. *Clifton* having been summoned to attend a Committee of this House, and not attending thereupon, is guilty of a Contempt, and of a Breach of the Privilege of this House.

*Ordered*, That the said Mr. *Clifton* be, for his said Contempt and Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

*Resolved*, That it appears to this House, That Mr. *Henry Cesar*, one of the Curfitors of *London* and *Middlesex*, having been summoned to attend a Committee of this House, and not attending thereupon, is guilty of a Contempt, and of a Breach of the Privilege of this House.

*Ordered*, That the said Mr. *Henry Cesar* be, for his said Contempt and Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

*Martis 6 die Martii, 1704.*

The Serjeant at Arms attending this House acquainted the House, That a Person had this Morning brought him a Writ of *Habeas Corpus*, under the Great Seal, for Mr. *Mountague* (in his Custody by Order of this House) to be brought (as he was informed) before the Lord Keeper of the Great Seal of *England*: And he delivered the Writ (under Seal) in at the Table. And it appearing by the Label to be returnable *immediatè*, but not before whom he was to be brought, nor any Officer's Name thereto, the Writ was opened by the Clerk, and read; and is as followeth.

*Anna Dei Gratia Ang' Sco' Fran' & Hibern' Regina Fidei Defensor, &c. Samueli Powel Ar' Serv' ad Arma attenden' Honorab' Dom' Commun' ejus Deputato & Deputatis Salutem. Precipimus vobis & cuilibet vestrum quod Corpus Jacobi Mountague Ar' nuper capt' & in Custod' vestra vel aliqujus vel unius vestrum ut dicitur detent' sub salvo & securo Conduci' una cum Die & Causa Captivitat' & Detentionis pred' Jacobi Mountague quocunq; nomine idem Jacob' Mountague censeatur in eadem habeatis seu aliquis vel unus vestrum habeat cor' predilecto & fidel' nostro prebenerab' Nathan Wright Mil' Dom' Custod' Mag' Sigil' nostri Ang' apud Dom' Mansional' suam in Parochia Sancti Egidii in Campis in Com' Mid' immediatè post Reception' hujus Brevis ad faciend' subjiciend' & recipiend' ea omnia & singula que dictus Dominus Custos Magni*

*Magni Sigil' nostri Angl' de eo ad tunc & ibidem Cons' in hac parte & habeatis seu aliquis vel unus vestrum habeat ibi hoc Breve. Teste meip'sa apud Westm' sexto Die Martii Anno Regni nostri tertio.*

The Label. *Samuel Powel Ar' Servien' ad Arma, &c. H. Corp' pro Mountague Ar' R. immediatè.*

Endorsed, *Per Statutum vicefim' prim' Caroli Secundi Regis.*

N. Wright, C. S.

The Serjeant also acquainted the House, That he heard there was another *Habeas Corpus* granted for Mr. *Denton*, in his Custody also.

While the Matter (upon occasion of the said forementioned Writ) was debating, the Serjeant acquainted the House, That the other Writ of *Habeas Corpus* was just served upon his Deputy, who had Mr. *Denton* in his Custody: And he also delivered the same in at the Clerk's Table, where it was read; and was the same, *mutatis mutandis*, with the former.

And the Precedents of what was done in the Year 1675 were (by Order) read: And several Members mentioned, upon their Memory, what was done in the Year 1680, in the Case of one Mr. *Sheridon*.

But the House were of Opinion, That any Person committed by the House of Commons was not bailable, within the Act of *Habeas Corpus* of 31 Car. II. But came not then to any Resolution.

*Martis 6 die Martii, 1704.*

Mr. *Bromley* reported, from the Committee appointed to draw up what is proper to be offered to the Lords at the next Conference, That they had drawn up the same accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and (with some Amendments) agreed unto by the House: And the same is as follows, *viz.*

The Commons have desired this Conference with your Lordships, in order to preserve that good Correspondence between the Two Houses, which the Commons shall always sincerely endeavour to maintain, and which is so particularly necessary at this Time of common Danger, that the Commons would not engage in any thing that looks like a Dispute with your Lordships, were it not for the Necessity of vindicating, from a manifest Invasion, the Privileges of all the Commons of *England*, (with which the House of Commons is entrusted) even those Privileges which are essential not only to the well Being, but to the very Being of an House of Commons; and the preventing the ill Consequences of those Misunderstandings, which, if they are not speedily removed, must otherwise interrupt the happy Conclusion of this Session, and the Proceedings of all future Parliaments.

It was this Consideration alone has so long prevailed with the House of Commons, not to insist on due Reparation for those violent and unparliamentary Attempts made by your Lordships upon their Rights and Privileges at the End of the last Session of Parliament, but to apply themselves to the giving the speediest Dispatch to those Supplies which her Majesty so earnestly re-

commended from the Throne, which are so necessary to enable her Majesty to pursue the Advantages that have been obtained against the common Enemy by the great and glorious Successes of her Majesty's Arms; and which are now delayed in your Lordships House, in so unusual a Manner.

The Commons do agree to your Lordships, That when either House of Parliament have apprehended the Proceedings of the other to be liable to Exception, the antient Parliamentary Method has often been to ask a Conference; because it ought to be supposed, That when the Matters are fairly laid open and debated, that which may have been amiss will be rectified, or else the House that made the Objections will be satisfied that their Complaint was not well grounded. But your Lordships seem so little to desire to have Matters fairly laid open and debated, that, to the great Surprise of the Commons, when your Lordships had invited them to a Conference, *about some antient fundamental Liberties of the Kingdom*, they found only the antient and fundamental Rights of the House of Commons, and their Proceedings, censured, and treated in a Manner unknown to former Parliaments; and that your Lordships had anticipated all Debates, by delivering positive Resolutions; and these Proceedings of your Lordships grounded only upon the Petitions of Criminals that had fallen under the just Censure and Displeasure of the Commons, and upon a printed Paper, which was not regularly before your Lordships.

Though this Manner of Proceeding, as well as the Matters of your Lordships Resolutions, might have justified the House of Commons in refusing to continue Conferences with your Lordships, as their Predecessors have done upon less Occasions; and though the Commons cannot submit their Privileges to be determined or examined by your Lordships, upon any Pretence whatsoever; yet, that nothing may be wanting on their part to induce your Lordships to retract these Resolutions, they proceed to take them into their Consideration.

Your Lordships first Resolution is, *viz.*

That neither House of Parliament hath any Power, by any Vote or Declaration, to create to themselves any new Privilege, that is not warranted by the known Laws and Customs of Parliament.

As the Commons have guided themselves by this Rule, in asserting their Privileges, so they wish your Lordships had observed it in all your Proceedings. This had entirely taken away all Colour for Disputes between her Majesty's Two Houses of Parliament, and many just Occasions of Complaint from those the Commons represent. This would effectually put an End to that Encroachment in Judicature, so lately assumed by your Lordships, and so often complained of by the Commons; we mean the Hearing of Appeals from Courts of Equity in your Lordships House. This would have hindered the bringing of original Causes before your Lordships, and your unwarrantable Proceedings upon the Petition of *Thomas Lord Wharton*, complaining of an Order of the Court of *Exchequer*, bearing Date the 15th of July, 1701, for filing the Record of a Survey of the Honour of *Richmond* and



and Lordship of *Middleham* in the County of *York*; an Attempt which (contrary to the antient legal Judicature of Parliament heretofore exercised, for the Relief of the Subject oppressed by the Power of the great Men of the Realm) was in favour of one of your own Body, to suppress a publick Record, which all her Majesty's Subjects had an undoubted Right to make use of; an Attempt that tends to render all Fines and Recoveries, and other Records (upon which Estates and Titles depend) precarious; and consequently subjects the Rights and Properties of all the Commons of *England* to an illegal and arbitrary Power.

A due Regard to the same Rule would have prevented your Lordships entertaining the Petitions mentioned at the last Conference, which set forth,

*That the Lords having given Judgment in the Case of Ashby and White, viz. That by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Election of Members to serve in Parliament, and being wilfully denied or hindered so to do by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts, against such Officer, to assert his Right, and recover Damages for the Injury: The Petitioners thereupon brought the like Actions in their own Cases.*

Whereby an extrajudicial Vote of your Lordships is stated as a Judgment of Parliament and Standing Law in that Case, your Lordships having no Foundation for the entertaining such Petitions, unless, that after having assumed to yourselves the Hearing of Appeals from Courts of Equity, you would now bring Appeals to your Lordships from the Proceedings of the Commons, who are not accountable to your Lordships for them.

Your Lordships Second Resolution is,

That every Freeman of *England*, who apprehends himself to be injured, has a Right to seek Redress by Action at Law; and that the commencing and prosecuting an Action at Common Law, against any Person (not entitled to Privilege of Parliament) is no Breach of the Privilege of Parliament.

To which the Commons say, That every Freeman, and every Subject of *England*, has a Right to seek Redress for any Injury; but then such Person must apply for that Redress to the proper Court, which hath by antient Laws and Usage the Cognizance of such Matters: For should your Lordships Resolution be taken as an universal Proposition, all Distinction of the several Courts, viz. Common-Law, Equity, Ecclesiastical, Admiralty, and other Courts, will be destroy'd; and in this Confusion of Jurisdiction, the High Court of Parliament is involved in your Lordships Resolution.

However, the Commons conceive it no Wonder your Lordships should favour the universal Proposition, That all Rights whatsoever are to be redressed by Actions at Law, when your Lordships pretend to have the last Resort in Cases of Judicature by Writs of Error; so that your Lordships are, in this, only extending your own Judicature, under the Colour of a Regard and Tenderness for the Rights of the People, and Liberties of their Persons.

The Commons are surpris'd to find your Lordships assert, That the commencing and prosecuting an Action against a Person not entitled to Privilege of Parliament, is no Breach of the Privilege of Parliament, since it is most certain, That to commence and prosecute an Action which would bring any Matter or Cause solely cognizable in Parliament, to the Examination and Determination of any other Court, is more destructive to the Privileges of Parliament, than to commence and prosecute an Action against a Person only who is entitled to such Privilege.

That some Matters and Causes are solely cognizable in Parliament, hath ever been allow'd by the sage Judges of Law, and is evident from many Precedents; and to bring such Causes to the Determination of other Courts, strikes at the very Foundation of all Parliamentary Jurisdiction, which is the only Basis and Support even of that Personal Privilege to which the Members of either House of Parliament are entitled; and consequently, to commence and prosecute any Action, whereby to draw such Causes to the Examination of other Courts, is equally a Breach of the Privilege of Parliament, whether the Defendant, against whom such Action is brought, is entitled to the Privilege of Parliament or not, which, besides the Nature and Reason of the Thing, is fully evident from the constant Usage of each House of Parliament, in committing for Contempts only against their respective Bodies, as appears from many Precedents upon the Journals of both Houses.

Your Lordships Third Resolution is thus, viz.

That the House of Commons, in committing to *Newgate*, *Daniel Horne*, *Henry Basse*, and *John Paton*, Junior, *John Paty*, and *John Oviat*, for commencing and prosecuting an Action at Common Law against the Constables of *Aylesbury*, for not allowing their Votes in Election of Members to serve in Parliament, upon Pretence, that their so doing was contrary to a Declaration, a Contempt of the Jurisdiction, and a Breach of the Privilege of that House, have assumed to themselves alone a Legislative Authority, by pretending to attribute the Force of a Law to their Declaration; have claim'd a Jurisdiction not warranted by the Constitution; and have assumed a new Privilege, to which they can shew no Title by the Laws and Customs of Parliament; and have thereby, as far as in them lies, subjected the Rights of *Englishmen*, and the Freedom of their Persons, to the arbitrary Votes of the House of Commons.

In Answer to which, the Commons affirm, That the said Commitment is justified by antient Precedents, and by the Usage and Customs of Parliament, which is the Law of Parliament, and the Rule by which either House ought to govern their Proceedings; and that the Terms of assuming to themselves alone a Legislative Authority, of attributing the Force of a Law to their Declaration, of claiming a Jurisdiction not warranted by the Constitution, of assuming a new Privilege, to which they can shew no Title by the Law and Custom of Parliament; and of arbitrary Votes; are more applicable to this Resolution

solution of your Lordships, which hath no one Precedent to justify it.

According to the known Laws and Usage of Parliament, it is the sole Right of the Commons of *England*, in Parliament Assembled, (except in Cases otherwise provided for by Act of Parliament,) to examine and determine all Matters relating to the Right of Election of their own Members.

And, according to the known Laws and Usage of Parliament, neither the Qualification of any Elector, nor the Right of any Person elected, is cognizable, or determinable elsewhere, than before the Commons of *England* in Parliament Assembled, excepting such Cases as are specially provided for by Act of Parliament.

And were it otherwise, the Mayors, Bailiffs, and other Officers, who are obliged to take the Poll at Elections, and make a Return thereupon, would be exposed to Multiplicity of Actions, vexatious Suits, and insupportable Expences; and such Officers would be subjected to different and independent Jurisdictions, and inconsistent Determinations, in the same Case, without Relief.

And the Exercise of this Power by the House of Commons, is warranted by a long uncontested Possession, and confirmed by the Act that passed 7 & 8 Guil. III. Cap. 7. And the House of Commons must be owned to be the only Jurisdiction that can allow the Elector his Vote, and settle and establish the Right of it; the last Determination in that House being, by that Act of Parliament, declared to be the standing Rule for the Right of Election in each respective Place. Nor can any Elector suffer either Injury, or Damage, by the Officer's denying his Vote: For when the Elector hath named the Person he would have to represent him, his Vote is effectually given, both as to his own Right and Privilege, and as it avails the Candidate in his Election; and is ever allowed, when it comes in Question in the House of Commons, whether the Officer had any Regard to it or no.

In the Beginning of the Parliament, held 28 Eliz. Mr. Speaker acquaints the House, That he had received, by the Lord Chancellor, Her Majesty's Pleasure; That She was sorry the House was troubled with the Matter of determining the choosing and returning of Knights for the County of *Norfolk*: That it was improper for the House to meddle in it, which was proper for the Lord Chancellor, whence the Writs issued out, and whither they were returnable: That Her Majesty had appointed the Lord Chancellor to confer therein with the Judges; and, upon examining the same, to set down such Course as to Justice and Right should appertain.

Nov. 9. A Committee was appointed to examine and state the Circumstances of the Return of the Knights for the County of *Norfolk*.

And on Friday, Nov. 11. Mr. Cromwell reports the Case of the *Norfolk* Election very largely, in which Report are these following Resolutions.

1. That the said Writ was duly executed.
2. That it was a pernicious Precedent, that a New Writ should issue without the Order of this House.
3. That the discussing, or judging of this, and such like Differences, only belonged to the said House.

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4. That tho' the Lord Chancellor and Judges are competent Judges in their Courts, they are not so in Parliament.

5. That it should be entered in the Journal-Book of the House, That the first Election is Good; and that the Knights then chosen, were received and allowed as Members of the House; not out of any Respect the House had, or gave to the Lord Chancellor's Judgment therein passed, but merely by Reason of the Resolution of the House itself, by which the said Election had been approved.

6. That there should be no Message sent to the Lord Chancellor, not so much as to let him know what was done therein; because it was derogatory to the Power and Privilege of the said House.

It also appears, That Sir *Edmond Anderson*, Lord Chief Justice of the *Common Pleas*, was acquainted, That the Explanation and Ordering of the Cause, appertained only to the Censure of the House of Commons, not to the Lord Chancellor and the Judges; and that they should take no Notice of their having done any thing in it.

Accordingly Mr. *Farmer* and Mr. *Gresham* were received into the House, and took the Oaths; being admitted only upon the Censure of the House, not as allowed by the Lord Chancellor, or the Judges; and so ordered to be set down and entered by the Clerk.

And this Right of the Commons to determine their own Elections, has never been disputed since the Case of Sir *Francis Goodwin*, 1 Jac. I. when the Lords would have enquired into the Proceedings of the House of Commons upon his Election: But the Commons then told their Lordships, "It did not stand with the Honour of the House to give Account to their Lordships of any their Proceedings or Doings."

And in the Reasons of their Proceedings in that Case, which they laid by Petition before the King, among other Things, they say, "They are a Part of the Body to make New Laws; yet, for any Matter of Privileges of their House, they are, and ever have been, a Court of themselves, of sufficient Power to discern and determine without the Lords, as the Lords have always used to do theirs, without them."

In which Reasons, as well as in their Apology afterwards to that Prince, the House of Commons did, above a hundred Years since, so clearly, and with so much Strength of Reason, assert their Right in the Matter of the Election of their Members. The Commons think it their Duty to resist all Attempts whatsoever to invade them.

And upon this Occasion, it may not be improper to cite the Opinion the House of Commons had, of the Judges intermeddling in Matters of their Elections, as they have delivered it in the aforesaid Apology, in these Words, viz.

Neither thought we, that the Judges Opinions, (which yet in due Place we greatly reverence, being delivered with the Common Law,) which extends only to inferior and standing Courts, ought to bring any Prejudice to this High Court of Parliament; whose Power, being above the Law, is not founded on the Common Laws, but they have their Rights and Privileges peculiar to themselves.

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When the Earl of *Shafisbury* was Lord Chancellor, Writs issued, during a Prorogation of Parliament, for electing Members in the Room of those that were dead: The King himself was so cautious, as to the Regularity of this Proceeding, and had so much Regard to the Privileges of the House of Commons, that at the next Session of Parliament, 5 Feb. 1672, he spoke to the Commons, from the Throne, in these Words:

One Thing I forgot to mention, which happened during this Prorogation; I did give Orders for the issuing some Writs for the Election of Members instead of those that are dead, that the House might be full at their Meeting: And I am mistaken, if this be not according to former Precedents. But I desire you will not fall to other Business, 'till you have examined that Particular; and I doubt not but Precedents will justify what is done: I am as careful of all your Privileges, as of my own Prerogative.

February 6, 1672. The House of Commons took that Matter into Consideration; and several Precedents being cited, and the Matter at large debated, and the General Sense and Opinion of the House being, "That, during the Continuance of the High Court of Parliament, the Right and Power of issuing Writs for electing Members to serve in this House, in such Places as are vacant, is in this House, who are the proper Judges also of Elections, and Returns of their Members:

*Thereupon it was Resolved,*

"That all Elections, upon the Writs issued since the last Session, are void; and that Mr. Speaker do issue out his Warrant to the Clerk of the Crown, to make out New Writs for those Places." Which was done accordingly.

No other Court than the House of Commons, hath ever had the Determination of the Elections, or any Cognizance of such Causes, except where by Acts of Parliament directed: And such an Action as those against the late Constables of *Aylesbury*, to bring the Right of Voting in an Election in Question in the Courts of Law, is a New Invention, never heard of before; which (as New Devices in the Law are generally attended with Inconveniencies and Absurdities,) was plainly to subject the Elections of all the Members of the House of Commons to the Determination of other Courts.

This undoubted Privilege and Jurisdiction, the Commons think will warrant these Commitments, if the late Declaration, (which is agreeable to, and cannot lessen their ancient Right,) had never been made.

For it is the ancient and undoubted Right of the House of Commons, To commit for Breach of Privilege: And the Instances of their committing Persons, not Members of the House, for Breach of Privilege, and that to any Her Majesty's Prisons, are so ancient, so many, and so well known to your Lordships, that the Commons think it needless to produce them.

And it being the Privilege of the House of Commons, to have the sole Examination and Determination of all Causes relating to their Elections, as aforesaid:

It follows, That any Attempt to draw any such Causes to the Determination of any other Court, is a Breach of the Privilege of the House of Commons; for which the Person offending may be committed by the Commons.

And here we cannot but take Notice of that unreasonable, as well as unnatural Insinuation, whereby your Lordships endeavour to separate the Interest of the People from their Representatives in Parliament, who pretend to no Privileges; but upon their Account, and for their Benefit; and are sorry to say, they are thus severely reflected on by your Lordships, for no other Reason, but for their interposing to preserve the Rights of the People, and their Liberties, from your Lordships arbitrary Determinations.

Your Lordships Fourth Resolution, is,

That every *Englishman*, who is imprisoned by any Authority whatsoever, has an undoubted Right, by his Agents, or Friends, to apply for, and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due Course of Law.

The Commons do not deny that every *Englishman*, who is imprisoned, by any Authority whatsoever, has an undoubted Right to apply, by his Agents, or Friends, in order to procure his Liberty by due Course of Law; provided such Application be made to the proper Place, and in a proper Manner: As upon the Commitments of the House of Commons, (which sometimes are not, as other Commitments, in order to bring to Trial; but are, in Cases of Breach of Privilege and Contempt, the proper Punishment of the House of Commons,) the Application ought to be to that House.

The Commons are so willing to allow and encourage every *Englishman* to apply, by his Friends, or Agents, to obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due Course of Law, that they have not censured any Person merely for applying for such Writ of *Habeas Corpus*, even in Cases where by due Process of Law the Prisoners cannot be discharged. For the Commons must observe, that in many Cases a Prisoner cannot, upon a Writ of *Habeas Corpus*, obtain his Liberty; as in Cases of Commitment in Execution, or for Contempt to any Court of Record, or by Virtue of *Mefne Process*, or the like; and in the Act of *Habeas Corpus*, several Cases are expressly excepted: And that no Person, committed for any Contempt, or Breach of the Privilege, by the House of Commons, can be discharged upon a Writ of *Habeas Corpus*, or by any other Authority, than that of the House, during that Session of Parliament, is plain from the following Precedents.

23 *May*, 1 *Jac. I.*

*Jones*, the Prisoner, to be sent for hither, and to attend his Discharge from the House.

That the Prisoners committed by us, cannot be taken from us, and committed by any other.

In *May* 1675, the House of Commons having Resolved, That there lay no Appeal to the Judicature of the Lords, from Courts of Equity; and that no Member of the House should prosecute any Appeal from any Court of Equity, before the House of Lords; Serjeant *Pemberton*, Serjeant

Serjeant Peck, Sir John Churchill, and Charles Porter, Esq; were committed to the Custody of the Serjeant of the House, for a Breach of Privilege, in having been of Council at the Bar of the House of Lords, in the Prosecution of a Cause depending upon an Appeal, wherein Mr. Dalmaboy, a Member of the House of Commons, was concerned.

But the Serjeant having been by Force prevented keeping them in Custody, the Commons did, the 4th of June, 1675, acquaint the Lords, at a Conference, as followeth; viz.

We are further commanded to acquaint you, That the Enlargement of the Persons imprisoned by Order of the House of Commons, by the Gentleman Usher of the Black Rod; and the Prohibition, with Threats, to all Officers, and other Persons whatsoever, not to receive or detain them, is an apparent Breach of the Rights and Privileges of the House of Commons: And they have therefore caused them to be retaken into the Custody of the Serjeant at Arms, and have committed them to the Tower.

The said Council were afterwards committed to the Tower for a Breach of Privilege, and Contempt of the Authority of the House: And the House being informed, That the Lords had ordered Writs of Habeas Corpus for bringing the Council to the Bar of their House;

The Commons then passed the following Resolutions.

7 Junii, 1675.

*Resolved, Nemine contradicente,*

That no Person, committed for Breach of Privilege by Order of this House, ought to be discharged, during the Session of Parliament, but by Order, or Warrant of this House.

*Resolved, Nemine contradicente,*

That the Lieutenant of the Tower, in receiving and detaining in Custody Sir John Churchill, Serjeant Peck, Serjeant Pemberton, and Mr. Porter, performed his Duty according to Law; and, for so doing, he shall have the Assistance and Protection of this House.

*Resolved, Nemine contradicente,*

That the Lieutenant of the Tower, in case he hath received, or shall receive any Writ, Warrant, Order, or Commandment, to remove or deliver any Person or Persons committed for Breach of Privilege, by any Order or Warrant of this House, shall not make any Return thereof, or yield any Obedience thereunto, before he hath first acquainted this House, and received their Order and Directions how to proceed therein.

*Ordered,*

That these Resolutions be immediately sent to the Lieutenant of the Tower.

Afterwards the Lieutenant of the Tower gave the House an Account, That he had refused to deliver the Council, upon the Lords Order, signified to him by the Black Rod, because they were committed by this House; and that after he had received the Votes of this House, he had Writs of Habeas Corpus brought him, to bring the Council to the House of Lords at Ten o'Clock the next Morning, and humbly craved the Direction of the House what to do.

Mr. Speaker intimated to him, He should forbear to return the Writs.

And the House came to several other Resolutions.

9 Junii, 1675.

*Resolved, Nemine contradicente,*

That no Commoner of England, committed by Order or Warrant of the House of Commons, for Breach of Privilege, or Contempt of that House, ought, without Order of that House, to be, by any Writ of Habeas Corpus, or other Authority whatsoever, made to appear, and answer, and do, and receive a Determination in the House of Peers, during the Session of Parliament wherein such Person was committed.

*Resolved, Nemine contradicente,*

That the Order of the House of Peers, for the issuing out of Writs of Habeas Corpus concerning Serjeant Peck, Sir John Churchill, Serjeant Pemberton, and Mr. Charles Porter, is insufficient and illegal; for that it is general, and expresses no particular Cause of Privilege, and commands the King's Great Seal to be put to Writs not returnable before the said House of Peers.

*Resolved, Nemine contradicente,*

That the Lord Keeper be acquainted with these Resolutions, to the end that the said Writ of Habeas Corpus may be superseded, as contrary to Law and the Privileges of this House.

*Resolved, Nemine contradicente,*

That a Message be sent to the Lords, to acquaint them, That Serjeant Peck, Sir John Churchill, Serjeant Pemberton, and Mr. Charles Porter, were committed by Order and Warrant of this House, for Breach of the Privilege and Contempt of the Authority of this House.

22 Martii, 1697.

Charles Duncomb, Esq; having been committed by Order of this House, and afterwards discharged by Order of the House of Lords, without the Consent of this House:

*Resolved,*

That no Person committed by this House can, during the same Session, be discharged by any other Authority whatsoever.

*Resolved,*

That the said Charles Duncomb be taken into the Custody of the Serjeant at Arms attending this House.

These are some Instances, among many others, that might be produced upon this Occasion; and the last cannot but be particularly remembered by some Noble Lords that then Sate in the House of Commons, and strenuously asserted this Privilege of the Commons.

Your Lordships fifth Resolution, viz.

*Resolved,* That for the House of Commons to censure or punish any Person for assisting a Prisoner to prosecute a Writ of Habeas Corpus, or by Vote, or otherwise, to deter Men from soliciting, prosecuting, and pleading upon such Writ of Habeas Corpus, in behalf of such Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the neces-



necessary Assistance to the Prisoner; upon a Commitment of the House of Commons, which has ever been allowed upon all Commitments by any Authority whatsoever.

The Commons take this to be another Instance of your Lordships Breach of your own Rule, your Lordships being no Judges of their Privileges; tho' by this Resolution you seem to make a Judgment, without having heard, and knowing what the Commons have to alledge for them.

This Attempt therefore in your Lordships is of dangerous Consequence, tending to a Breach of the good Understanding between the Two Houses, and of most pernicious Example. The Commons late Proceeding, in censuring and punishing the Council that have pleaded upon the Return of the Writs of *Habeas Corpus*, in behalf of the Prisoners, if duly considered, is a great Instance of the Temper of the House of Commons: For this House did not interpose when the Prisoners applied to the Lord Keeper, and the Judges, to be bailed; and had the Lawyers shewn so much Modesty, as to have acquiesced in the Opinion of the Lord Keeper and all the Judges, That these Prisoners were not bailable by the Statute of *Habeas Corpus*, the Commons had never taken any Notice of it: But they would not rest satisfied without bringing on again this Case; and the Privileges of the Commons were, with great Licentiousness of Speech, denied, and insulted in publick Court; not with any Hope or Prospect of Relief of the Prisoners, (who in this whole Proceeding have apparently been only the Tools of some ill-designing Persons, that are contriving every Way to disturb the Freedom of the Commons Elections) but in order to vent these new Doctrines against the Commons of *England*, and with a Design to overthrow their fundamental Right. And after so much Inveteracy shewn to the Commons, they could do no less than declare the *Abettors, Promoters, Countenancers, or Assistors, of a Prosecution so carried on, to be guilty of conspiring to make a Difference between the Two Houses of Parliament, to be Disturbers of the Peace of the Kingdom, and to have endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons of England in Parliament assembled.*

And the Commons, in committing the Lawyers, have only done that Right to their Body which your Lordships have frequently practised, in Cases of personal Privilege, where any single Member of your Lordships House is concerned.

Your Lordships last Resolution, viz.

That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for, (tho' at the Request of either House of Parliament) the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta*.

The Commons shall not enter into any Consideration, whether a *Writ of Error* is of Right, or of Grace; they conceiving it not material in this Case, in which no *Writ of Error* lies, nor was ever any *Writ of Error* brought or attempted in the like Case before; and the allowing it in such Cases would not only subject all the Privi-

leges of the House of Commons, but the Liberties of all the People of *England*, to the Will and Pleasure of the House of Lords.

And when your Lordships Exercise of Judicature upon Writs of Error is considered, how unaccountable in its Foundation, how inconsistent it is with our Constitution, which, in all other Respects, is the wisest and happiest in the World, to suppose the last Resort in Judicature and the Legislature to be differently placed?

And when it is considered how that Usurpation, in bearing of Appeals from Courts of Equity, so easily traced, tho' often denied and protested against, yet still exercised, and almost every Session of Parliament extended; it is not to be wondered, that after the Success your Lordships have had in those great Advances upon our Constitution; you should now at once make an Attempt upon the whole Frame of it, by drawing the Choice of the Commons Representatives to your Determination; for that is a necessary Consequence, from your Lordships encouraging the late Actions, and your countenancing a *Writ of Error*; which, if allowed upon such a Proceeding, might as well be introduced upon all Acts and Proceedings of Courts or Magistrates of Justice: And tho' the present Instance has been brought on under the specious Pretence of preserving Liberty, it is obvious the same will as well hold to controul the bailing and discharging Prisoners in all Cases.

And the Commons cannot but see how your Lordships are contriving, by all Methods, to bring the Determination of Liberty and Property into the bottomless and insatiable Gulph of your Lordships Judicature, which would swallow up both the Prerogatives of the Crown, and the Rights and Liberties of the People; and which your Lordships must give the Commons Leave to say, they have the greater Reason to dread, when they consider in what Manner it has been exercised; *the Instances whereof they forbear, because they hope your Lordships will reform: And they desire rather to compose the old, than to create any new Differences.*

Upon the whole, the Commons hope, That, upon due Consideration of what they have laid before your Lordships, you will be fully satisfied they have acted nothing in all these Proceedings, but what they are sufficiently justify'd in from Precedents, and the known Laws and Customs of Parliament; and that your Lordships have assumed and exercised Judicature contrary to the known Laws and Customs of Parliament, and tending to the Overthrow of the Rights and Liberties of the People of *England*.

*Resolved*, That a Conference be desired with the Lords, upon the Subject Matter of the last Conference.

*Ordered*, That Mr. *Aislaby* do go to the Lords, and desire the said Conference.

*Mercurii 7 die Martii, 1704.*

Mr. *Aislaby* reported, That he having been at the Lords (according to the Order Yesterday) to desire a Conference upon the Subject Matter of the last Conference, the Lords return an Answer,

That they do agree to a Conference accordingly, and appoint the same presently in the Painted Chamber.

*Ordered*,

*Ordered,*

That the Managers who managed the last Conference, do manage the Conference which is to be presently with the Lords.

And the Managers went to the Conference.

And being returned,

Mr. Bromley reported, That they had been at the Conference, and delivered to the Lords what the House had directed.

A Message from the Lords by Sir Richard Holford and Mr. Pitt. Mr. Speaker, The Lords desire a free Conference with this House to Morrow at One of the Clock, in the Painted Chamber, upon the Subject Matter of the last Conference.

*Resolved,*

That this House will send to the Lords an Answer by Messengers of their own.

And the Messengers were call'd in again; and Mr. Speaker acquainted them therewith.

*Jovis 8 die Martii, 1704. Anno 4 Annae Reginae.*

*Resolved,*

That a Message be sent to the Lords, to acquaint them, That when their Lordships sent Yesterday in the Afternoon, after Three o'Clock, to desire a free Conference upon the Subject Matter of the last Conference, the House was just rising; but that this House will meet their Lordships at a free Conference, as their Lordships have desired, at such Time as their Lordships shall appoint, the Time named Yesterday by their Lordships being now past.

*Ordered,*

That Sir Thomas Hanmer do carry the said Message.

*Ordered,*

That the Managers who managed the last Conference, do manage the said Free Conference: And some others were added to them.

Sir Thomas Hanmer reported, That he having been at the House of Lords, to deliver the Message directed by this House, he found that the Lords were just up.

The Serjeant at Arms, attending this House, having acquainted the House, That he had received two Writs of *Habeas Corpus* under the Great Seal of *England*, to bring before the Lord Keeper the Bodies of James Mountague, Esq; and Alexander Denton, Esq; (who are committed to his Custody by Warrants from the Speaker of this House for a Breach of Privilege.)

The House again assumed the Consideration of that Matter: And after Debate,

*Resolved,* That no Commoner of *England*, committed by the House of Commons for Breach of Privilege, or Contempt of that House, ought to be, by any Writ of *Habeas Corpus*, made to appear in any other Place, or before any other Judicature, during that Session of Parliament wherein such Person was so committed.

*Resolved,* That the Serjeant at Arms, attending this House, do make no Return of, or yield any Obedience to the said Writs of *Habeas Corpus*; and for such his Refusal, That he have the Protection of the House of Commons.

*Resolved,* That the Lord Keeper be acquainted with the said Resolutions, to the End, that the said Writs of *Habeas Corpus* may be superseded, as contrary to Law, and the Privileges of this House.

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*Ordered,* That the Clerk of this House do acquaint the Lord Keeper of the Great Seal of *England* with the said Resolutions.

*Veneris 9 die Martii, 1704.*

The Clerk acquainted the House, That he did, pursuant to their Commands last Night, wait upon the Right Honourable the Lord Keeper of the Great Seal of *England*, and acquaint his Lordship with the Resolutions of the House Yesterday, relating to the Writs of *Habeas Corpus*; and left the Resolutions with his Lordship.

Sir Thomas Hanmer reported, That he having been at the Lords with the Message order'd Yesterday, the Lords do return Answer, That they do agree to meet this House at a free Conference this Day, at Two o'Clock, in the Painted Chamber.

Then the Managers went to the free Conference.

And being returned,

Mr. Bromley reported, That the Managers appointed had met the Lords at the free Conference, which had lasted very long; And that when the Managers for the Commons took Notice of some Invasions of the House of Lords in Point of Judicature, particularly as to Appeals, the Lords broke up the Conference.

*Ordered,* That the Managers do draw up what had passed at the Conference, and lay the same before the House with all convenient Speed.

*Martis 13 die Martii, 1704.*

Mr. Bromley reported, That the Managers of the free Conference with the Lords had (according to Order) drawn up what had passed at the said free Conference, which they had directed him to report to the House, which he read in his Place, and afterwards delivered in at the Clerk's Table.

*Ordered,*

That the said Report be enter'd upon the Journals, and is as followeth, viz.

That the Lords who appear'd as Managers, and spoke at this free Conference, were, the Earl of *Sunderland*, the Lord *Ferrers*, the Bishop of *Salisbury*, the Lord *Halifax*, the Lord *Wharton*, and the Duke of *Devonshire*, Lord Steward.

That the free Conference was begun by the Managers for the Lords, who said, This Conference was desired to maintain a good Correspondence between the Two Houses, which was never more necessary than at this Time.

That the delivering Resolutions at their first Conference was Parliamentary; and instanced the Resolutions 3 *Car. I.* which produced the Petition of Right.

That the Lords look upon the Commons to be a great Part of the Constitution, which cannot be preserved but by doing Right to both Houses.

That every Part of the Body Politick, as well as the Body Natural, ought to be kept within due Bounds; an Excess in any Member will weaken the whole.

That this Constitution is the Wonder of the World, and Glory of this Nation; 'tis founded upon Liberty and Property: And the House of Commons hath been a great Fence and Bulwark of Liberty.



That the Lords Resolutions are very well founded, and justified by the Laws of the Land, as is their Judicature in this Case.

That it was proper for them to receive the Petitions, and make these Resolutions thereupon.

That the Lords are the great Court of Judicature; and when the Courts below have differed in Opinion, there has been resort to the Lords for their Judgment, as in the Case of Kindred of Half-blood, claiming Shares of Intestates Estates.

That when such a Complaint comes before the Lords, they ought to give their Opinion as to the Law of the Land; and that was the Foundation of their present Resolutions.

1. That the First Resolution was, in Effect, agreed to by the Commons, tho' they go off to Foreign Matters, of which the Lords take no Notice.

That the Law of the Land can be altered only by the Legislature.

2. That the Second Resolution asserts the Subjects Redress by Action at Law, &c.

That all Constitutions have reckon'd this their Safety, That every Man, from the highest to the lowest, hath the Protection of the Law.

That, according to our Constitution, the Subject may contest his Right with the Crown, and upon equal Terms, with that Respect which is due.

That this Resolution only asserts the Right, does not state the respective Courts, where the Redress is to be had: If the Party mistakes the Court, he is punished by Costs of Suit.

The Term of privileged Causes is new, and the Distinction unknown.

3. To support the Third Resolution, it was urged,

That the Breach of Privilege was not well grounded.

That it belongs to the Crown to make Declarations; the Commons did indeed make Ordinances; and when their Prince was murdered, they came to Declarations.

That a Law, without Promulgation, cannot have Force to make an Offence.

The Liberty of Men's Persons is the greatest Privilege, and not to be taken away, but in known Cases; the invading of it has shook the best Constitutions.

That the taking away the Liberty of one mean Person, once endanger'd the Government of Rome.

That both Houses may commit for Breach of Privilege, but cannot declare any thing to be a Privilege, without good Grounds; nor consequently make any thing a Contempt, that is not known to be so.

That Commitments, or Censures, have not been usual upon Actions at Law, tho' such Actions have brought the Proceedings, or Privileges, of either House in Question.

That in the Case of Freedom of Speech, which is the greatest Privilege, there was a Judgment in King Charles the First's Reign, in the Heat of those Times, against some Members, for Speeches in Parliament: This the Commons first condemn'd; and then by Conference brought it before the Lords, who came to a Resolution, That it was erroneous, and desired the Lord Hollis to bring his Writ of Error; and thereupon it was reversed by the Lords, in the Time of

Charles the Second; which shews the Care the Lords had of the Commons Privileges.

That in *Soame and Barnardiston's Case*, the Commons did not concern themselves, only in Support of the Action, when in 1678, they examined the Judgment of Reversals as a Grievance.

That the Lords had not interposed in any Suits which concern'd the Proceedings of their House.

That the Earl of *Banbury* (as he was called) was, by the Lords, adjudged to be no Peer: This was examin'd in the *King's-Bench*, where, in Abatement of an Indictment of Murder against him, as *Charles Knolles*, Esq; he pleaded his Title of an Earl; and in Avoidance of that, the Order of the Lords was replied, and was examin'd by the Court, and disallow'd.

That the late Bishop of *St. David's* was prosecuted in the Spiritual Court, and deprived, tho' a Member of that House; and the Lords did not interpose.

That it is the Wisdom of all Governments, to have the Law open; and that's the Difference between a Legal and an Arbitrary Government.

That the Lords do not meddle with the Commons Right of determining their own Elections; they have a settled Possession of it, which is a Right: But if all the Rights of Subjects concerned in those Elections are to be determined there, that will bring all Questions of Freehold, and the Allowance of all Charters, and all Liberty and Property, before them.

That a Freeholder of Forty Shillings *per Annum* has a Right of Inheritance, to which he is born; and if his Vote is denied, he is damnified, and loses the Credit of his Vote; and if he shall only come to the House of Commons, they can neither give him Damages, nor Costs of Suit.

That a Freehold cannot be determined by any Court which cannot give an Oath.

That the Precedents produced concern only the Right of determining Elections in general.

And an Action by an Elector, for his Right of voting, does not avoid the Election.

4. To maintain the Fourth Resolution, they said,

That it may be lawful for a Man to apply for his Liberty, where he cannot have it.

That the Proceedings in 1675, produced as a Precedent in this Case, were upon a Matter contested between the Two Houses, and resolved differently in the Lords House: *Topham* and the Lieutenant of the Tower, were both turn'd out; and the Ferment was so high, that the Parliament was prorogued, and soon after dissolved.

5. The Fifth Resolution is a Consequence of the Fourth:

That the Commitment of the Lawyers was not for licentious Speech, as was insinuated at the last Conference, but for pleading upon the Return of the Writs of *Habeas Corpus*.

That 'tis the particular Character of that odious Court call'd the Inquisition, that no body dares appear for, or resort to a Person imprison'd there, but he is left to the Mercy of that Court.

The Lawyers are not to be answerable for every thing they argue; they are to do their Duty for their Clients, and the Court is to judge of it.

6. The Commons declining the last Resolution is an agreeing it, though not so Parliamentary as it would have been to have agreed it directly.

That

That the Lords are the only proper Judges, Whether the Writ of Error lies before them.

To these Arguments the Managers for the Commons Answered,

That they agreed the Necessity of a good Correspondence between the Two Houses, especially at this Time of common Danger; and that the Commons had fully shewn their Desire to maintain that good Correspondence, by condescending to meet their Lordships at this free Conference, altho' their antient and fundamental Privileges had been call'd in Question, and denied by their Lordships, and that in an extraordinary and very unparliamentary Manner.

That the Delivery of Resolutions is so far from being the only Method of Conferences, that the more usual Method has been to offer Reasons, without Resolutions; and it would be very difficult to give any Instance (before this) of either House delivering positive Resolutions at a Conference, without the Reasons, at the same Time, to support them, and that induce them to make such Resolutions.

1. That the Commons Answer to the Lords First Resolution is not foreign to the Subject Matter of the Conference; because the Commons apprehended the Subject Matter to be their Lordships denying the Privileges of the Commons on the one Hand, and their extending their own Judicature beyond its proper Limits on the other: And therefore the Commons could not but take Notice, how far their Lordships had transgressed in the Exercise of an unwarrantable Judicature, in Contradiction to that very Rule they had laid down for the Test of the Proceedings of the Commons, and by which the Commons had strictly govern'd themselves.

That the Commons cannot create new Privileges; yet in *Coke's* 13 Reports, Fo. 63. 'tis said, the Privilege of Parliament, either of the Upper House, or of the House of Commons, belongs to the Determination or Decision only of the Court of Parliament; for every Court hath a Right to adjudge their own Privileges, according to the Book of *E. 4. Sir John Paston's Case*.

2. To their Lordships Arguments for their Second Resolution your Managers answer'd,

That every Person injured, hath a Right to seek Redress; but then that Redress must be sought in the Place where the Matter is properly cognizable.

3. To what the Lords offered upon the Third Resolution, your Managers answered, That Matters of Election do not belong to the Courts below, but only to the House of Commons, which hath been in long Possession of them: That there was an Act of Parliament made in the Time of King *Henry the Sixth*, to give an Action for a false Return of Members to serve in Parliament, because no such Action lay at Common Law, it relating to Elections.

That double Returns not being within that Statute, no Action lay in the Courts of Common Law, for making any double Return, 'till the Statute 7. & 8 *William III.*

That besides the Instances given in the Answers the Commons gave to the Lords Resolutions, at the last Conference, this Distinction, as to privileged Cases, is fully and undeniably warranted by the Statute made in the First Year of King *William* and Queen *Mary*, Entitled, *An*

*Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; where, among other Endeavours of the late King *James*, to subvert and extirpate the Laws and Liberties of the Kingdom, these are mentioned, *by violating the Freedom of Election of Members to serve in Parliament, and Prosecutions in the Court of King's-Bench, for Matters and Causes only cognizable in Parliament.*

Besides, That there are privileged Cases as well as privileged Persons, appears from hence: A Prohibition, and afterwards an Attachment, lies for suing in the Spiritual Court for a Temporal Cause determinable in the Temporal Court. There are divers Laws within this Realm, of which the Common Law is but one, as appears in *Coke's* 1 *Inst.* Fo. 11. B. where he mentions *Lex & Consuetudo Parliamenti, & Lex Communis*, as distinct Laws.

As there are several Laws, so there are several Courts and Jurisdictions, and several Causes proper for those several Laws and several Jurisdictions: Of these the High Court of Parliament is the First; *Lex & Consuetudo Parliamenti* is a great Branch of the Law of *England*; and many Causes are to be determined only by that Law, as appears in the *Inst.* Fo. 23.

With such Causes as are in their Nature Parliamentary, and to be determined by the Law of Parliament, the Common Law, and Common Law Judges have nothing to do; as further appears, 4 *Inst.* Fo. 14, 15. where the Expressions are very suitable to the present Controversies.

That the Persons persisting in the Prosecution of such Actions, after a Prohibition by the Commons, for that such Causes belong to their Jurisdiction, the committing them for the Breach of their Privileges in that Particular, is no more than is done by the Common Law Courts for a like Contempt, when Persons will sue after a Prohibition to the Spiritual Courts: And the Commons usual way to defend their Privileges against such Invasions, has been by committing the Tools and Instruments thereof.

It is a fundamental Maxim of the Law and Custom of Parliament, which is the highest and noblest Part of the Law of *England*, and particularly adapted to the Preservation of the Liberties of this Kingdom, That the Two Houses are independent of one another, and sole Judges of their Rights and Privileges: That their Lordships did admit, the Commons have a Privilege to judge of the Rights of their own Elections to one Intent, but not to another: But if the Commons have such a Privilege to one Intent, they must be Judges of it to all Intents and Purposes whatsoever; and being sole Judges thereof, their Judgment cannot be legally call'd in Question, either by Writs of *Habeas Corpus*, Writs of Error, or otherwise, in any other Court; and consequently the Proceedings in *Westminster-Hall*, and in the House of Peers, and the Judgment given there, are all null and void, & *coram non Judice*.

The Commons Commitment for commencing these Actions, is no more than what they and their Predecessors have in all Times practised in Cases of Breach of Privilege.

4. In Answer to what the Lords had offered upon the Fourth Resolution, your Managers insisted, That Application of Friends for the Liberty of any Person imprisoned, ought to be in a pro-



a proper Place, and in a proper Manner, which in this Case ought to have been only to the House of Commons, and by the Petitions of the Persons they had committed.

That the Proceedings in 1675 were so well grounded, that they must be Precedents to the Commons to follow at all Times upon the like Occasions.

5. To what the Lords offered upon the Fifth Resolution, your Managers answered;

The Licentiousness of Speech used by the Lawyers, was only mentioned among other Particulars of the Provocations they gave the House of Commons; but they were committed for pleading upon the Returns of the Writs of *Habeas Corpus*, in Behalf of the Prisoners committed by the House of Commons, which the Commons (who are the only Judges of their own Privileges) take to be a great Breach of the Privilege of their House.

6. To the last Resolution your Managers insisted, That no Writ of Error lies in that Case; and that there may be Cases wherein no Writ of Error lies, was their Lordships Opinion in the Case of the late Bishop of *St. David's*, who brought his Writ of Error upon the Court's not granting him a Prohibition.

The Case of *Sir Thomas Armstrong*, mentioned by their Lordships, was particular, in that the Commons then apprehended he was entitled to a Writ of Error within the Meaning of the Statute of *Edward the Sixth*.

Your Managers further urged the Novelty of the Action in the Case of *Ashby and White*, of which no Footsteps can be found in any Book of the Law, or in any Record, although we have faithful Reports of all memorable Cases for four hundred Years past; and the Occasion of such an Action must frequently have happened.

The Lords themselves (when they had no Design upon the Privileges of the Commons) were of Opinion, in the Case of *Sir Samuel Barnardiston*, in the first Year of the Reign of King *William*, That no such Action lay; and there is no one Reason can be offered to maintain this Action, but held more strongly in the Case of *Sir Samuel Barnardiston*, as Damages, Costs, &c. And it is an absurd Distinction to say, That in this Case the Right of Election cannot come in Question, because the determining of the Right of the Electors doth generally determine the Right of the Elected; and almost all controverted Elections depend upon the Qualifications of the Electors.

That the Commons had shewn such a Disposition to maintain a good Correspondence with their Lordships, though their Lordships, in the Case of *Ashby and White*, had, contrary to the Judgment of the Courts below, allowed the Action, upon which the Plaintiff had taken out Execution, and levied the Money, that the Commons took no Notice of it, and were willing to let the Matter fall; which might occasion any Contest in this Time of publick Danger: But when other Actions of the like Nature were still commenced and prosecuted, whereby all Elections would be brought to the Determination of the Lords, or, at least, in time so influenced, as that the Lords would in effect chuse the Commons, and thereby the Independency of the Two Houses would be destroyed, which is the great Safety of the Constitution; then it con-

cerned the Commons, who are the Representatives of the People, to oppose what would be so fatal to our Constitution.

The bringing Writs of *Habeas Corpus* upon the Commitments of the Commons, and a Writ of Error thereupon before the Lords, would bring all the Privileges of the Commons to be determined by the Judges, and afterwards by the Lords, upon such Writs of Error.

Nay, such Writs of Error upon every *Habeas Corpus*, would bring the Liberty of every Commoner in *England* to the arbitrary Disposition of the House of Lords.

And if a Writ of Error cannot be denied in any Case, and the Lords alone are to judge whether the Case be proper for a Writ of Error, then all the Queen's Revenue, all her Prerogatives, and all the Lives and Liberties of the People of *England*, will be in the Hands of the Lords; for every Felon, Burglar, and Traitor, will be entitled to a Writ of Error before the Lords; and they will have even Power of Life and Death.

And by Writs of Error and Appeals, as already exercised, they will have all our Properties; by such new-invented Action they will have all our Elections; and by such Writs of *Habeas Corpus*, and Writs of Error thereupon, they will have all our Privileges, Liberties, and even Lives, at their Determination; who determine by Vote, with their Doors shut, and it is not certainly known who it is that hurts you.

The Novelty of those Things, and the infinite Consequences of them, is the greatest Argument in Law, That they are not of Right.

The Commons are not contending for a small Thing, but for their All:

Especially since the Lords have found out a way to distress the Government, by detaining the Money given by the Commons, which must come last to them, because the Money-Bills must begin with the Commons; and if by that Means they can extort Writs of Error where they never were heard of, the Commons must commit the Persons employed in all such Innovations, or else they must lose, by such Contrivances, All that they have.

In the Case of *Denzill Hollis*, *Sir John Elliott*, &c. in 1667, the Commons declared the Judgment given in 5 *Car* I. to be an illegal Judgment, and against the Privilege of Parliament: And this they did of themselves, before they acquainted the Lords therewith.

Afterwards, because it concerned the Lords as well as the Commons, they imparted their Resolutions to the Lords, who concurred with the Commons; and the Writ of Error, which was afterwards brought at the Desire and Instance of the Lords, and not at all by the Desire of the Commons, they rested upon their own Resolution, That it was an illegal Judgment. *Vid.* Vol. 7. P. 242.

The Lords, by way of Reply, said further, That this is a Cause of Liberty and Property, and judicial Proceedings, which the Commons had endeavoured to stop.

That the Conference therefore asked by the Lords upon the fundamental Rights and Liberties, was proper.

That they are the same Terms the Commons used, 3 *Car.* when their Liberties were attacked.

That

That the true Method of Conference is not by way of Question and Answer, but by Resolutions, which are not so binding; but if the Lords are convinced by Arguments, they may retract them.

That the Lords, sure, may regularly take Notice of this printed Paper, when it contains such Declaration as all Persons are bound to take Notice of at the Peril of Commitment.

That the Right of the House of Commons to determine their own Elections is not in Question, or intended to be changed; but the two Precedents produced to support them are very much mistaken.

That the Case of Sir *Francis Goodwin* is not fairly stated, the Word *Order* being omitted in the Commons Answer to the Lords Message, relating to the Commons Proceedings in this Case; which refers to a particular Order of the House of Commons, they having before determined that Election. That it is not taken Notice, that the Lords went with the Commons to the King, and were Mediators; and that at the last a new Writ issued for a new Election.

That in the stating the Precedent, 28 *Eliz.* the Commons have not taken Notice, That the Election was in that Case determined by the Judges.

That the Commons did not confine their Resolution to *Armstrong's* Case; but it is general and absolute, That a Writ of Error in Felony, or Treason, is of Right, and not of Grace.

That by the Writ of Error brought in the late Bishop of *St. David's* Case, upon the Denial of a Prohibition, and disallowed by the Lords, it appears, when a Record comes improperly before them, they are so just as to dismiss it.

That, instead of proving the Law, the Consequences are urged, which is not right arguing.

That the Question is, Whether the Queen is bound to grant a Writ of Error? If She is, it will be hard for any Body of Men to interpose with the Crown, and stop it to hinder that *Fiat*; which, by the Opinion of the Judges, She ought to give.

She is obliged too, by *Magna Charta*: *Nulli negabimus, nulli deferemus, Justitiam.*

That whether a Writ of Error lies or not, will afterwards be proper for the Judgment of this Court, as 'tis of any other Court where a Writ of Error is returnable.

That the Commons are very safe, and may depend the Lords will be as tender of their Privileges as of their own.

That whatever Privileges accrue to the Commons, will accrue to the Lords also: If the Commitments of the Commons are free from the Cognizance of the Courts below, those of the Lords will be so too.

That 3 *Car.* the Commons maintained, That the Measure of Persons beingailable, is not from the Authority which committed, but from the Cause of Commitment.

Your Managers further observed, This Subject Matter was scarce ever in Conference before between the Lords and Commons, and will seem strange to Posterity.

That the Lords Concern for Liberty and Property cannot be equal with that of the Commons; for the Lords Liberty is better fenced,  
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and consequently their Property too, than that of the Commons.

The Lords are less interested in the Event of this Conference than the Commons; who are the Trustees of those who sent them, and are bound in Duty and Interest to preserve their Liberty and Property: And having but a Triennial Duration, which is at this Time near expiring, it is not to be imagined they will infringe what they are entrusted with, and so much concerned to maintain; and that so notoriously, that the Lords should complain, who are much less concerned, but more to be feared, as their Designs, as well as Honour, may be Hereditary.

At the first Conference, six Resolutions were delivered, as Matters of undoubted Truth and Law.

And the Proceedings of the Commons are to be tried by these Rules, though they were no Parties to the making them.

1. The First is not to be excepted against; only is an Insinuation, as if the Commons had practised the contrary, which they are not conscious of.

2. To the Second, There are many Injuries for which no Action at Law is allowed; as if a Judge gives a wrong Judgment, the Redress by Writ of Error is no Satisfaction for the Damage.

So for other Acts of a Judge, or Court of Justice, as denying a Writ of *Habeas Corpus*, or Bail, no Action lies, but upon the late Statute.

That their Lordships, not making any Distinction between Matters and Causes which were exempt from the Cognizance of the Common Law Courts, as being solely cognizable in Parliament, and Causes which were exempt only in respect of the Persons sued, being entituled to Privilege of Parliament, seems to be the Occasion of the Mistakes their Lordships have entertained in relation to the Proceedings of the Commons: That the House of Commons is a Court of Judicature in many respects; and as such, hath, as well as other Courts, Causes proper and peculiar to its Jurisdiction.

That the Law-Books, and particularly the Lord Coke, speaks of Matters of Parliament which are not to be determined by the Common Law, but according to the Law and Usage of Parliament.

That all Matters moved, or done in Parliament, must be Questioned and Determined there, and not elsewhere, has been heretofore asserted by the House of Commons, as their ancient and undoubted Right, and has been allowed both by the Judges of Law, and by their Lordships. And when the Judges in the *King's-Bench*, in the fifth Year of King *Charles* the First, upon an Information against Sir *John Elliot*, Mr. *Hollis*, and others, held, That Matters done in the House of Commons, if not done in a Parliamentary Way, might be questioned elsewhere; that Judgment was afterwards reversed in Parliament.

That their Lordships allowed all Matters relating to Elections, ought to be determined solely by the Commons: And though their Lordships attempted to make a Distinction between the Right of Elections, and the Right of Electors, yet their Lordships cannot find Room for such a Distinction, unless they would say, the Right and Qualification of the Electors was a Matter not relating to Elections.



That by the Parliament Rolls, 11 Rich. II. it appears a Petition was exhibited by Parliament, and allowed by the King, *That the Liberties and Privileges of Parliament should be discussed by the Parliament, and not by any other Courts, nor by Common or Civil Law*; and therefore, when the Judges have been asked their Opinions in Matters of Parliament, they have answered, *That the Privileges of Parliament ought to be determined there, and not by any other*; as they did in the Case of *Thorpe*, Speaker of the House of Commons, 31 H. VI.

That these Matters are not exempt from the Determination of other Courts, in respect of the Persons sued; for then they might be determined there after the Time of Privilege was expired; whereas it is evident, That such Matters and Causes cannot be determined in any other Courts than that of the Parliament, after the Expiration of the Time of Privilege, any more than before.

That these Matters are determinable in Parliament, although the Persons prosecuted are not entitled to the Privilege of Parliament, as appears by many Instances, particularly by that of the Mayor of *Westbury*, in the Eighth Year of Queen *Elizabeth*, who, for taking *Four Pounds* to get a Person elected a Burgess for that Borough, was fined and imprisoned by the *House of Commons*, although he was not a Person entitled to the Privilege of Parliament.

That it may as well be said, That an Action is maintainable for refusing any of the Lords a Right of Precedency in Parliament; yet it cannot be imagined the House of Peers would be content the same should be brought in Question in any the Courts of Law, and decided by a Jury of Commoners.

But the same Arguments will hold for maintaining such an Action, to recover Damage for refusing Precedency to him that hath Right to it, as for maintaining an Action to recover Damages for refusing to take down upon the Poll the Vote of an Elector: For it may with equal Reason be said in both Cases, That the Plaintiff hath a Right, That the Defendant refused him that Right, That such Refusal is an Injury, and consequently ought to be repaired in Damages.

3. As to the Third Resolution, the Commons are not accountable to the House of Lords, or any other Court, for what they did in that Matter.

Their Privileges being Rights peculiar to that House, what is their Privilege, and the Breach of it, is only examinable, and to be judged by themselves.

That the Courts of *Westminster-Hall* have that Deference for each others Judgment, that in Commitments for Contempt, or Misdemeanor, which are frequent every Term, another Court, though Superior, will not redress the Prisoner by *Habeas Corpus*, or otherwise; but he must address to the Court which committed him, much less can an inferior Court do it.

The House of Commons therefore expected the same Deference from those Courts which they pay each other; and also from the Lords House what is due to a Co-ordinate Jurisdiction: The Commons taking themselves to be superior to any Court in *Westminster-Hall*, and not allowing any Court in this Government to be their Superior, no more than their Predecessors have done.

The Commons do not intend by their Declaration to make a new Law, but barely declare what the Law was, and prohibit any Person to act contrary.

The Term Declaration is not peculiar to the Prince, but is a familiar Term in *Westminster-Hall*.

The Commitment was not for acting contrary to the Vote of the Commons, but for acting contrary to Law, after the Law was notified to them by that Declaration, and they thereby prohibited to proceed in that Course.

To set this in a true Light, If a Man sues in the Admiralty, or Ecclesiastical Court, for a Matter properly cognizable at Common Law, the Party shall not indeed be committed for commencing that Suit; but if the Defendant in such Suit obtains a Prohibition, which declares what the Law is, and gives the Plaintiff Notice that his Suit is contrary to Law, and therefore prohibits him to proceed any further therein; if he does proceed, an Attachment will issue to arrest him for Breach of the Prohibition, as it is said, though in Truth, it is for acting contrary to Law, after he had been admonished what the same was.

Now there is no Difference between the Declaration complained of, and the Prohibition mentioned, but in the Name only; both declare what the Law is; both admonish the Person offending, and both command him not to proceed; so that there is as much Reason to complain of a Prohibition at Law, as of the Declaration mentioned in the Resolution.

4. To the Fourth Resolution, if it respects the Prisoners committed by the Commons, they apprehend the Application ought to be to their House.

5. For the Fifth Resolution, the Commons have the same Exceptions to it as they had to the third Resolution: For if Council, Attornies, or Solicitors, are prohibited, and act contrary to the Order of any Court, they are guilty of a Contempt of that Court; and for such Contempt they may be taken into Custody.

To their Lordships last Resolution, it is very true, That in the last Reign the House of Commons did so resolve in the Cause of Sir *Thomas Armstrong* as hath been cited, which Case was, That Sir *Thomas Armstrong* was indicted for High-Treason, and afterwards fled beyond Sea, where he was at the Time of the *Exigent* awarded against him; and afterwards, within a Year after the *Exigent* awarded, he was brought Prisoner into *England*, and would have a *Writ of Error*, but it was denied him; upon which the *House of Commons* made the Resolution mentioned. At the Common Law, if a Person had been guilty of a capital, or any other Crime, and had been in *England* at the Time of the Indictment found against him, but was beyond Sea at the Time of the *Exigent* awarded, and thereupon an Outlawry was had, the Person outlawed might any Time afterwards have reversed that Outlawry for that Error in Fact: The Practice whereupon was, That Persons guilty of Treason, would fly beyond Sea, and there stay 'till the Witnesses against them were dead, and then return into *England*, reverse their Outlawry, and become safe. To remedy which Mischief, was the Statute of *Edward VI.* made, which takes away that Error in Treason, unless the Person Outlawed



Outlawed render'd himself to the Chief Justice within a Year after the Outlawry; within which Exception was the Case of Sir Thomas Armstrong, as the Commons apprehended; which was the Reason of the Resolution: And in other Cases the Practice since that Resolution has been otherwise; for in the Case of Salisbury, who was attainted of Felony for counterfeiting the Stamps, a *Writ of Error* was denied him, though he petitioned for the same. But if this Resolution is aimed at a *Writ of Error* for denying a *Habeas Corpus*, or denying to bail, or discharge Persons committed by the House of Commons, this Resolution is very wide from the Purpose; for, whether a *Writ of Error* be a *Writ of Right*, or a *Writ of Grace*, in all Cases where a *Writ of Error* does lie, yet their Lordships Resolution cannot be carried so far as to make a *Writ of Error* lie in a Case where there is no Judgment pronounced, as there never is in the Case of an *Habeas Corpus*, or in any thing relating thereunto; for if an *Habeas Corpus* is denied, or if granted, and the Persons thereupon denied to be bail'd or discharg'd, this is no such Judgment, but that the same, or any other Court, may grant an *Habeas Corpus*, and discharge or bail the Person committed.

Your Managers added, The Commons hoped it would be no Difficulty to convince the Lords, that these Resolutions were both unreasonable and unparliamentary, and they have not been much justified; and certainly it cannot be parliamentary, or reasonable, for the Lords to condemn the Commons in the Case of their own Privileges, when the Lords are no Judges of them: And therefore, though the Commons have now enter'd into this Debate with their Lordships, it was never meant to subject their Proceedings to the Lords Examination, but only to satisfy the Lords, and all Mankind, that the Commons have not done any extravagant Thing; that a Noble Lord said, *They did not intend to interrupt the Commons in the Determination of their Elections.* The Commons are beholden to them for that; for otherwise, when they thought fit, they might as well meddle with that, as several other Things they have of late taken upon them.

The Commons hope their Lordships will consider what the Constitution is, and think it not reasonable, that any Part should exceed its due Bounds: But there have been great Invasions made upon it by their Lordships, and some Instances of that kind have been deliver'd at the last Conference, and it would be easy to shew, That the Judicature which of late has been assumed by the Lords, is not consistent with the Constitution.

A *Writ of Error* in this Case, the Commons take to be such: And the Commons would be blameable for admitting of it, since no such *Writ* does lie; and the Commons have done well in advising Her Majesty not to grant it, since it is against Law: The Commons find no such *Writ* ever brought.

'Tis said, their Lordships will do Right to the Commons upon it; but the Commons can never think it reasonable to trust the Liberties of the People of England to their Lordships Pleasure, for they that have Power to do Right, have Power to do Wrong; and Power is so often abused, that the Commons can never suffer the Lords to assume this new Power to themselves. Were we certain Power could never be abused,

an *Arbitrary*; and what is called a *Tyrannical Power*, would be the best in the World, for that not being tied to any Rule, would apply the Remedies proper in all Cases; but since this is not to be expected, the Commons were in the Right to stop this *Writ of Error*: They find one Thing has brought on another; and therefore, for the future, shall oppose any further Progress of this Nature.

It was further urged by the Lords, in Reply, That if such a *Writ of Error* wants a Precedent, 'tis a new Sort of Imprisonment has occasion'd this.

That the Consequences urged by Gentlemen cannot avail.

That if the Law be so, nothing but the Legislature can alter it.

That 'tis said, the Lords cannot judge of the Privilege of the House of Commons. They do not say they can; there may be no Occasion: But from Precedents it appears they have done it by *Writ of Error*, and at the Desire of the Commons.

That not only the Lords, but all Mankind will judge of what is not their Privileges, if they claim that, which neither Sense, nor Reason, nor Law will justify.

That if the Commons say, To bring an Action at Law against Persons not privileged is a Breach of Privilege, all Mankind will say it is not.

That this comes upon a Petition of five Men to the Lords, setting forth, They have been imprison'd by the Commons for bringing their Actions against the Constables of Aylesbury, and for suing out *Writs of Habeas Corpus*, and are at least delay'd in a *Writ of Error*.

The Question lies in a narrow Compass;

Whether they have a Right to bring their Actions at Law? If so, it is Injustice to imprison them for doing it;

A Hardship to deny them *Writs of Habeas Corpus*, and a greater to imprison their Council and Agents, for endeavouring to procure them their Liberty.

That their Right is settled by a Judgment of Law, which will ever remain, 'till alter'd by the Legislature.

That a Declaration of one House, or both Houses, cannot alter the Law.

That the Lords intend not to disturb the Commons in their Right of Judging, only as to their own Members.

That the material Difference is between judging of the Right of the Electors, and the Right of the Electd.

And there may be Cases, as here, where the Election is not in Question, and yet the Electors receive great Damage in being deny'd their Vote.

That the Right of Freehold is a Man's Birth-right, and cannot be taken from him, but by Law.

That if any Person be injured by any Officer whatsoever, he may, by Law, seek for Reparation: Otherwise, there is a Right without a Remedy, which is no Right at all.

In Answer to this, your Managers said;

This Action is of the First Impression; and 'tis a good Argument no such Action lies, because none was ever brought before; and especially, because Occasions cannot be presumed to have been wanting in every new Election of Member,



Members to serve in Parliament; nay, many more justifiable than in the late Case of *Ashby and White*, where the Plaintiff was a Person likely to become chargeable to the Parish, and therefore removed by the Order of Two Justices: And this, by the Way, brings in Mind the printed Case of *Ashby and White*, from the Report of the Lords Committees; where 'tis given in Answer, No such Action before was brought, *That few had such a true English Spirit as that Plaintiff*, though, it is said, he then was a *Cobler*, and formerly had been an *Hofler*; and his Breast, it seems, was first warm'd with this true *English Spirit*, which was rather a Spirit of Faction.

And it is worthy Observation, That in this Case, the Costs and Charges sustain'd by *Ashby*, or somebody for him, could not be less than 100*l.* more than the Costs and Damages he recovered; so that 'twas *infelix victoria*, and no Benefit, but a Loss to him. A Noble Lord was pleased to say further, That tho' he would not pretend to judge of the Commons Privileges, yet he might of what was not their Privilege. That Argument appears very strange, since the Commons say, The Matter in Question is their Privilege; and if the Lords saying 'tis not, is sufficient to divest them of it, the same Method may divest the Commons of all the rest. The Commons are not going about to create new Privileges, but continue the Possession of those which their Predecessors ever enjoyed and exercised; and which they think neither this, or any other future House of Commons, can ever depart from.

The Lords afterwards receded from the Generality of their second and last Resolutions.

They said, The second, so far as that every one who apprehends himself injured, has a Right to seek Redress, was general; but what followed of an Action at Law, was confined to the present Case.

So the sixth, tho' it was general, was to be understood in this particular Case.

As to what was said, That none but a superior Court can take Cognizance of what another does, it was answered,

That when the Earl of *Shaftsbury* was committed by the House of Lords for a Contempt, he was brought by a *Habeas Corpus* to the Court of *King's-Bench*: This was complained of to the House of Lords; but they passed it over, being of Opinion, a Man might seek for Liberty where he would.

The Lords Judicature is too sacred a Thing to be touched.

Your Managers thereupon returned, They wished their Lordships had said that at the beginning, it would have saved much Time, and shortened the Debates; for the Commons think their Privileges as sacred as the Lords can their Judicature. Your Managers proceeded to say,

That as nothing offered at this Conference, or the last, was meant to submit or lessen the Privilege of the Commons; much less had any thing in the Precedents in the Time of Queen *Elizabeth*, and *James I.* produced at the last Conference, any Tendency that way.

And in Answer to some Objections made to those Precedents, your Managers said, The Commons did not take upon them to set forth

the whole Proceedings, which are very long; but tho' they had not their Books there to make out the Quotations, can depend upon what they have stated to be true.

In the Precedent of Sir *Francis Goodwin's* Case, cited by the Commons, there are no Omissions that, duly considered, can make that Case less to the Advantage of the Commons on this Occasion: for if the Word *Order* be omitted, and taking the Answer to have been, *That they did conceive it did not stand with the Honour and Order of the House to give Account of any their Proceedings or Doings*, that will little alter the Case, since it is plain, from the Entry on the Journal, the Commons, in returning this Answer, had Regard chiefly to the Precedent then quoted, 27 *Eliz.* when the Commons refused to give the Lords any Reasons (tho' the Lords desired them) for the rejecting at the first reading a Bill the Lords had sent down to the Commons: The Reasons for the Commons Proceedings in this Case were prepared by themselves, which they did communicate to the Lords; but the Lords were not to add or diminish: And tho' some Lords were present at the Commons delivering their Reasons, there is a material Distinction upon the Commons Journals of those Lords being present as *Lords of the Council*, and not as *Lords of the Parliament*.

And the Noble Lord who took Notice of the Commons Omission in the stating of this Case, and pretended to state it fully and truly himself, omitted, That the new Writ was ordered to issue at the Request of Sir *Francis Goodwin*, by his Letter; which, for the Satisfaction of the House, was read and entered on the Journal, before any Question for the new Election was made.

In that of the 28th *Eliz.* the Commons did not at the last Conference omit to take Notice of the Judges Determination; but it is justly stated as a Matter the Commons in the Examination of that Case were informed of, but did not respect; the Commons then asserting themselves to have the sole Determination of that Case.

Your Managers further urged,

Tho' the Commons do not submit their Privileges, it may be proper to ascertain what they claim, with the Reasons why they are at this time the more concerned to oppose all Attempts upon them.

They do agree, the Right of Voting may be grounded upon Freehold, Charter, or Prescription; and they do not pretend to draw them from the Courts of Common Law, when as such they come there originally, immediately and directly in Question.

But it is as plain, when the Right of Voting in an Election is the Thing originally, immediately and directly, in Question, that is solely cognizable in the House of Commons, whose Determination is the standing Rule for all Places; and if the Elections only were examinable by the Commons, and every Elector's Vote was examinable elsewhere, the Consequence of such different Determinations is fully stated, as delivered at the last Conference; which common and known Difference of coming originally, or collaterally and incidentally in Question, will answer the Case of the Earl of *Banbury*, where the Order of the House of Lords came only incidentally in Question upon an Indictment for Murder; not

is here any Injury in this Case that requires an Action, much less Damages; the Elector's Vote, upon every Election, depends upon its own true Foundation, as the Elector then stands intitled by Freehold, Charter, or Prescription, whether he was entitled, or was allowed or refused, at any former Election, or not.

Nor is Damage always necessary to a Remedy; that which is specifick, and gives the Right, is the most noble and compleat Remedy; Damages being only secondary, substituted by way of Recompence where the other cannot be had, as appears by many Instances in the Law.

The Commons had great Reason to assert their ancient Right, and withstand these late and new Attempts upon the Constitution, which in every Step have been unprecedented; viz. the *Admonition*, the *Habeas Corpus*, and the *Writ of Error*.

The Action was never known, tho' the like Occasions have been as frequent as Elections, unless these *Aylesbury* Men have more refined Notions of their Rights and Privileges than others ever had.

As to the *Habeas Corpus*, the Argument is so much stronger, as Liberty is dearer than Property.

As to the Writ of Error, tho' the Lords Resolution is general, they now assert it to be of Right only in this Case.

As the Commons at the last Conference waved the Point of a Writ of Error being of Right or of Grace, so they do now, not by way of Admission, but as 'tis not material in this Case.

But thus much may be observed, That this is not the Common Case, where the Question arises and falls under the Determination of the Judges of the Law, which is of Petitions of Right, and Writs of Error in the Courts of *Westminster*, (as that of Sir *Thomas Armstrong* was) where the Queen is Party; there it is in the room of a Suit against the Crown, and if denied, the Party has no Remedy.

This Petition to the Queen, for a Writ of Error in Parliament, is properly a Parliamentary Case, and is the same when the Queen is Party, or not; and seems some Remnant of our ancient Constitution, where all Petitions were to the King in Parliament, or to the King, and his Great Council, which was distinct from the House of Peers, and were examined by Tryers, whether fit for the Parliament to proceed upon, or not; and to say, That upon such Examination they could not be rejected, is to say, That Examination was insignificant.

And if in this Case no Writ of Error lies, it cannot then be said, That the denying of it is an Obstruction of Justice, or contrary to *Magna Charta*.

That a Writ of Error lies not in any Proceeding on any *Habeas Corpus*, has been the uniform Opinion of former Times, as appears in the Case of the City of *London*, 7 *Jac.* reported by the Lord Chief Justice *Coke*, in his Eighth Report, where one under an Arrest, for the Penalty in a By-Law, brought his *Habeas Corpus*; and the Judges took it for a Ground, That no Issue or Demurrer could be joined upon the Return, nor could any Writ of Error lie upon their Award; and upon that, as a Principle, grounded their Resolution, *Fo.* 128.

And that this never came directly in Question, is, because a Writ of Error in such Case was never

asked, much less had; upon a bare Commitment of any Court whatsoever: And it is hard to imagine, that there is any lawful Resort or Appeal for Liberty, left untried at this Day, when so many, in all Times, have had Occasion to apply for it; especially considering the frequent Commitments of both Houses of Parliament.

That the Commons are not surprized to find the Lords make such a Shew of submitting their Privileges to the Courts of *Westminster*, when it is in order to draw all the Rights and Privileges of both Houses to their own final Determination; and much less when they consider how insignificant all Courts of Justice are rendered, while their Lordships exercise the last Resort in Judicature.

The several Attempts in the Way of Judicature, which have been made upon the Constitution, are so many Reasons for the Commons at last to make a Stand.

The very Form of the *Writs of Error* in Parliament is altered in a most material Part.

It is still returnable into Parliament generally; and the Judgment is entered, *per Cur' Parliamenti*.

But where the ancient Form, which appears in *Rastall's Entries*, *Fo.* 302; was, *Ut de Concilio & Advjsamento Dominorum Spiritualium & Temporalium ac Communitatum in Parlamento nostro existentium ulterius pro Errore corrigendo fieri faciamus quod de jure, &c.*

Of late, as appears by a *Writ of Error*, printed in the Lord Chief Justice *Saunders's* Second Report, *Fo.* 228. (and agreeable to that are all the Modern ones) that Word (*Communitatum*) is omitted.

This is only touched for an Instance, That even the highest Records, which ought to derive to us our Laws and Constitution pure and entire, have been corrupted.

And to proceed to Instance some Modern Innovations upon our Constitution, in Point of Judicature:

In *December*, 18 *Jac.* I. it appears by the Lords Journal, That an Appeal to the Lords from a Court of Equity, was by them acknowledged to be as new and unprecedented as any of the Attempts which occasioned the present Conference.

Here the Lords interrupted your Managers, affirming, That they were restrained from entering into Debate of their Judicature of Appeals from Equity, as foreign from the Subject Matter of the last Conference. But it was answered, and insisted by your Managers, That this was Part of the Matter offered at the last Conference.

And your Managers declared,

That they had more to offer, and were ready to proceed upon the Subject Matter of the last Conference in such Manner as they thought their Duty to the Commons of *England* required, if their Lordships thought fit to hear them: Whereupon the Lords did rise, and broke off the Conference.

Resolved, That the Proceedings of this House, in relation to the *Aylesbury* Men, committed by this House for a Breach of Privilege, and the other Proceedings of this House in that Matter, are in Maintenance of the antient and undoubted Rights and Privileges of the Commons of *England*.



*Ordered*, That all the Proceedings, in relation to the *Aylebury* Men, committed by this House, and the Report of the Lords Journal, and Reports of the Conferences, and of the free Conference, be printed.

*Ordered*, That Mr. Speaker do appoint the printing of the said Proceedings and Reports.

*The Proceedings at the Court of Queen's-Bench on the Habeas Corpus.*

A Complaint was made to the Honourable House of Commons, That since their last Resolutions in the Cause of *Asby* and *White*, several Actions have been brought by *J. Paty*, *J. Oviat*, *J. Peyton*, *H. Basse*, and *D. Horne*, and prosecuted by *R. Mead*, against the Constables of *Aylebury*, in Breach of the Privileges of that Honourable House; whereupon they were pleased to order the Matter of the said Complaint to be heard at the Bar of their House, and ordered the Persons concerned to attend there, and appointed a Day accordingly.

The Parties appeared, (all but *Mead*) when the Witnesses were examined, and they severally called to the Bar of the House, and then withdrew. And, upon full hearing, the House were pleased to order their Speaker to issue out Warrants for committing them (being taken into Custody) to Her Majesty's Goal of *Newgate*.

In *Michaelmas* Vacation, 1704. they prayed a *Habeas Corpus* upon the Statute of 31 of *Cha. II.* upon the Return of which, all the Judges met and advised, whether they were bailable by that Statute, who were unanimously of Opinion that they were not, and accordingly they were remanded. And in *Hillary* Term following, they moved the Court of *Queen's-Bench* for a *Habeas Corpus* by the Common Law, which was granted, upon the Returns whereof the Judges of the *Queen's-Bench* desired the Assistance of the rest of the Judges, Whether they might be discharged? who were all of Opinion, except the Lord Chief Justice *Holt*, That they ought to be remanded: But it was argued in the *Queen's-Bench*, by Council, and afterwards the Judges delivered their Opinion *Seriatim*.

Mr. *Page*, Mr. *Mountague*, Mr. *Lechmere*, and Mr. *Denton* were Council for the Prisoners, and after the reading of the Return of the Commitment, Mr. *Page* said, That the Writ of *Habeas Corpus*, is a Writ grounded on Common Law, and therefore this Court can bail all Persons, that by the Laws of *England* are bailable; That he did not say, but that the House of Commons hath Privileges that belong to them, and may commit for Breach of such Privileges; that he did now only inquire, if there be any Law for the Commitment of the Prisoners, and therefore the first Question he made, was, *If there was a Breach of Privilege returned?* Adding, That there being no Notice in the Return, that the House of Commons has any Privilege, he needed not argue whether they have a Power, or not, to restrain Men from suing in the *Queen's* Court. The Lord Chief Justice *Holt* told Mr. *Page*, That the Question was, *If they were not to take Notice of their Power, tho' not returned to that Court?* Mr. *Page* answered, That tho' the Court would take Notice of any Power of the House, yet that not appearing in the Return, they could not judge of it, the Commitment being by the Speak-

er, and not by the House. The Lord Chief Justice replying, That the Commitment was in pursuance of the Order of the House; Mr. *Page* subjoined, That then it should be shewn to be by the House, the Speaker being in the Chair, which was not mentioned in the Commitment. But this was over-ruled by the Lord Chief Justice, who said, that by the House, was to be understood the whole House sitting, with the Speaker in the Chair.

Mr. *Mountague* continued the same Objection to the Commitment, adding, that it did not appear, that the Prisoners were any ways related to the House of Commons, either as Members or Officers: That as to the Lord *Shaftsbury's* Case, he was a Member; that he agreed every Court must, and have Power to keep Order among themselves, but that to take a Man out of the House, who was not of the House, nor guilty of any Breach of Privilege, for ought appeared, by a Return, he knew no Law for it; that the Case assigned, was because the Prisoners had been guilty of bringing and prosecuting an Action, which he did not take to be a Crime by any known Law; that in the Case of the Constable of *Aylebury*, there was a Judgment at Law judicially given, which could not be got over, until some Act of Parliament interposed; and the Law being so, that a Man might bring his Action, he did not know what Crime a Man could be guilty of that used this Law; that the Words of this Commitment went further, That bringing this Action is *contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges*; that they know not what this Word *Declaration* means, neither did they understand what that Breach of the Jurisdiction was; that as to the Words, *against the known Privileges of the House*, he was at a Loss what Action is against the Privilege of the House, because they can have no Privilege against Law, and he was sure it was not against Law to bring any Action. Then he took Notice, That the Commitment was during Pleasure; adding, That he had known Persons committed *per Mandatum Domini Regis* bailed, and therefore by stronger Reason ought they to be bailed, if committed by the House of Commons.

Mr. *Lechmere* enforced what had been alledged by the other Two, adding, That one Part of the Commitment, which set forth the Reasons of it, was for bringing an Action at Law, contrary to the Declaration of the House of Commons, in Opposition to which Declaration, he must oppose the Declaration of the Lords; that this Commitment being also said to be for a Contempt of the High Jurisdiction of the Commons, the Lords, in the Case of *Asby* and *White*, had declared against it: Then he urged, That no other Court, save that of the Lords, and the Courts at *Westminster*, and other inferior Courts of *England*, can execute any Jurisdiction, touching any Actions at Law, and that Privileges which are against the known Laws of *England*, are in themselves void. Another Objection, or Exception, was, That the Continuance of the Imprisonment of the Prisoners was a new Commitment; That the *Habeas Corpus* is the Way the Queen takes to make Disquisition about the Liberty of her Subjects; That tho' both Houses of Parliament are proper Judges of their own Privileges, yet this Court has formerly judged of their

their Privileges, to which Purpose he instanced in the Lord *Shaftsbury's* Case, wherein Notice is taken of a Case, where an Original was filed against a Member sitting in the House; and that in the Case of the Lord *Banbury*, tho' the Lords Temporal and Spiritual had declared he was no Peer; yet, in this Court, when he was brought to be tried for Murder, and denied the Jurisdiction here, insisting upon his Peerage, this Court refused to try him, and allowed his Plea; That the Laws of Parliament are the Customs of Parliament; That there is no Precedent in Parliament to oppose or commit a Man for prosecuting for his Freehold or Franchise; but on the contrary, he believed, in the Rolls of Precedents there might be found a Case, where Bail had been allowed by this Court, upon a Commitment of the House of Commons.

Mr. *Denton* excepted to the Return of the Commitment, alledging first, That the Warrant did not sufficiently describe the Crime; Secondly, That it did not appear, that the Party committed had Notice of the Vote or Declaration of the House of Commons, for every Man is not bound to take Notice of a Vote, because it is but a Temporary Thing; Thirdly, That it not appearing by this Return, that the Prisoner was a Commoner, he might, notwithstanding any thing that appeared to the contrary, be a Lord, and then it must be agreed, the Commons had no Jurisdiction: That if it had been a general Commitment, without shewing the Offence particularly, and said, for a Breach of Privilege only, perhaps it had been a good Commitment; But here the Cause was set forth, and it appeared by the Judgment of the Lords, in the Case of *Asbby* and *White*, that was no Cause at all of Commitment; that bailing the Prisoners in this Court, did not meddle with the Privileges of the House of Commons, because, if bailed, yet they are answerable to the House, and are Prisoners in *Custodia Legis*; that indeed Justices of the Peace can commit for a Riot without Bail, but this Power arises from an express Act of Parliament for that Purpose; That the Queen herself cannot commit so as to bind the Power of the Law, but this Court can in such Cases, and always have, upon good Cause shown, bailed, notwithstanding such Commitments: Concluding, upon the whole, for the Release of the Prisoners.

The Council having done Pleading, the Judges proceeded to give their respective Opinions.

Mr. Justice *Gould* and Justice *Powys* said, They would chiefly insist upon *Lex & Consuetudo Parliamenti*, but they would first maintain the Form of the Warrant.

*Obj.* It was objected, That it is not set forth in the Return, how the House of Commons have a Power to commit.

*Ans.* We must take Notice of their Power without shewing it:

*Obj.* That this is a Commitment by the Speaker only, for that the Warrant does not run, *Ordered by the Knights, Citizens, and Burgesses in Parliament assembled*, according to the Precedent in my Lord *Shaftsbury's* Case, 1 *Mod.* 144.

*Ans.* That it is good, being according to their Form, and that it must be presumed, the Speaker's Warrant was by Order of the House.

*Obj.* There is no Seal to the Warrant, and that every Warrant ought to be under Hand and Seal, or else the Commitment is unlawful.

*Ans.* Courts don't use to commit by Warrant under Seal, but a Justice of Peace must; but they at the Quarter Sessions don't commit under Seal; besides, the Custom of Parliament justifies this Warrant.

*Obj.* This is not like my Lord *Shaftsbury's* Case, for he was a Member of the Lords House; also this Commitment is for a Matter done out of the House.

*Ans.* Then they must never commit for Breaches of Privileges, for most are committed by others, than their own Members, and for Matters out of the House.

*Obj.* The Duration of the Imprisonment during Pleasure, is illegal and uncertain.

*Ans.* This is made use of for their Advantage, for they are discharged upon the Parliament's rising; but also this Form is according to their Customs. And for Contempts to this Court we commit, without expressing for what Time, which is by Consequence during Pleasure.

*Obj.* This Commitment is for bringing their Action at Law, and for taking the due Course of Law.

*Ans.* What is Privilege, but dispensing with the Law? The generality of Breaches of Privilege, are for taking the due Course of Law. As to the Case of *Asbby* and *White*, that is objected, who knows whether this is the same Case? it does not appear to us to be the same, for there may be different Votes, and different Circumstances in this Case; if you go to the scanning the Words of a Commitment, Who knows not that most Commitments that would hold for such, do express the Cause but shortly, and but just give a Hint? And the Law does presume, that the higher Courts do understand what they do, and therefore are not tied up to such Strictness as inferior Courts.

*Obj.* If this Court of *Queen's-Bench* can discharge a Man committed *per Mandatum Domini Regis*; they may upon a Commitment by any Member or Body of People whatsoever, if not legally committed.

*Ans.* That Commitment is not good, because the King does not act in Person, but hath committed all his *Power Judicial*, some in one Court, some in another, so that no body is to be committed to Goal upon the King's special Command. But what is done in Court, is of greater Authority, and the Law does adjudge it to be done by the King.

*Obj.* Shall the House of Commons take a despotick Power to regulate how Actions shall be brought, and what Actions shall not be brought?

*Ans.* Can we suppose that High Court would stop the Progress of the Common Law of *England*? 'Tis highly dishonourable to have such Thoughts, and no body dares think so, or will presume to say so; and People would laugh at one that should say, The House of Commons will take away the Liberties of the People.

There is no better Way to determine the Jurisdiction of either House of Parliament, than by Usage and Custom, as the Bounds of Parishes are. That there is no Precedent or Case, nor so much as an Opinion yet cited, that the Courts of *Westminster-Hall* have a Power to judge of the Authority of the House of Commons, or that the Orders and Commitment of the House of Commons can be discharged in *Westminster-Hall*, nor ever before attempted to be discharged here, upon



upon such a Commitment by the House of Commons; which is a good Argument, according to my Lord Coke's Rule, that we want Power to do it.

'Twould be impossible for us to judge of the Privileges of the House of Commons, for there are no printed Books of their Privileges, nor is there any Means by which we can attain to the Knowledge of them; but their Customs and Privileges are kept as *Arcana's* in the Rolls and Records of their own House, and their Privileges depend altogether upon Precedents in Parliament; they do judge it is a Contempt and Breach of their Privileges; And who shall say nay? They are proper Judges of the Matter, and upon the Return, it appearing they were committed by the House of Commons, our Jurisdiction ceases; and cited *Prynne's Animadversions*, fol. 4. and the King against Sir John Elliot, and others, in *Cr. Ch.* 181. (*Ante Vol. 7. p. 252, 253.*) That upon a Writ of Error in that Case, in the House of Lords, it was resolved, That this Court hath no Jurisdiction of a Misdemeanor committed in Parliament.

Mr. Justice Powell. That this is a Case of the highest Consequence, for it concerns the Privileges of the House of Commons, the Liberty of the Subject, and the Jurisdiction of this Court; 'tis the first Case of this Nature, for the Lord *Shaftsbury* was a Member of the House, and there may be a greater Jurisdiction in some Cases over their own Members, than over Strangers: However, they had not any Authority upon the Return, for they are committed by another Law than we proceed by; and to be committed by one Law, and to judge of the Commitment here by another Law, would be a strange Thing: For the House don't commit by the Authority of the Common Law, but by another Law, *Legem & Consuetudinem Parliamenti*; for there are in *England* several other Laws, besides the Common Law, *viz.* the Ecclesiastical Law, the Admiralty Law, &c. and there is the Law and Customs of Parliament, where they have particular Laws and Customs for their Directions.

To state Judicature will help to clear this Case. The House of Lords have a Power to judge by the Common Law, but not Originally, but a Dernier Resort upon Writs of Error and Appeals; and for that Reason it is provided by the Constitution, for the Judges to give their Assistance, which they are bound to do. But they have another Law, *viz. Lex & Consuetudo Parliamenti*, which the Judges are not to assist in, or give any Opinion; and I dare say, the House of Lords would take it ill, should they meddle or advise therein, for they have their Privileges in their own Rolls and Books.

That the Commons have also a Judicature, not by the Common Law, but do judge of Breaches of Privileges, and Contempts to their House, *secundum Legem & Consuetudinem Parliamenti*, 4 *Inst.* 23. and by this Law these Persons are committed, and now are brought to be discharged by the Common Law. The Resolution of the Commons upon the Breach of Privileges is a Judgment, and the Commitment an Execution of it, which cannot be controlled; for this would be to draw it *ad aliud Examen*, and then the Commons would not be supreme Judges of their own Privileges.

That the Resolution in the House of Lords, in the Case of *Asby and White*, does not bind the House of Commons, nor determine their Privileges; for they judged of the Privileges of the Commons as an Incident to the Action, and one Court may judge of a Matter within the Jurisdiction of another Court, when without it they cannot determine the Case before them; as this Court may of Admiralty, or Ecclesiastical Jurisdiction, if the Question arises in an Action depending in this Court. But such a Determination will not bind another Court, which has an original Cognizance of that Matter, as in Ejectment now depending in the Common Pleas, the general Issue pleaded, and a special Verdict; the Question there is, If a Quaker's Marriage be good? Now if it should be held in that Court a void Marriage, and the Judgment should be affirmed in this Court, and upon a Writ of Error in the House of Lords, it should be reversed, this would not bind the Ecclesiastical Court, but they might proceed there for Incontinency; and if they should proceed there to Excommunication, finding it a void Marriage, and the Party taken by the *Excommunicato Capiendo* should bring this *Habeas Corpus* upon the Return of it, we could not discharge him. But this is a Matter originally arising in Parliament.

That this Court may keep other inferior Courts within their Jurisdictions, but not the House of Commons; for no Prohibition was ever granted to that Court, though they exceeded Jurisdiction: So if the House of Lords do exceed, or take Cognizance of Matters in the first Instance, no Prohibition would lie; for no inferior Court can prohibit a superior: And no Prohibition was moved here, nor could we have granted it; for the House of Commons is superior to all ordinary Courts of Law. When the House of Lords took Cognizance, and proceeded upon the Petition of my Lord *Wharton*, complaining of an Order of the Court of Exchequer, for filing the Record of a Survey of the Honour of *Richmond*, and Lordship of *Middleton*; which the House of Commons, upon the Petition of Mr. *Bathurst*, complaining of this Proceeding, Jan. 28, 1703. Resolved to be without Precedent, and unwarrantable, and tending to the subjecting all the Rights and Properties of the Commons of *England*, to an illegal and arbitrary Power. They also Resolved then, That it is the undoubted Right of all the Subjects of *England*, to make use of the Record; as they ought by Law to have done, before the said Proceeding of the House of Lords, *Vide postea*.

In 4 *Inst.* 50. It doth not belong to the Judges to judge of any Law, Privileges, or Customs of Parliament; for the Laws, Customs, Liberties, and Privileges of the Parliament, are better to be learned out of the Rolls of Parliament, and other Records, and by Precedent and continual Experience, than can be express'd by any one Man's Pen.

In 4 *Inst.* Every Court of Justice hath Laws and Customs for its Direction; some by the Common Law, some by the Civil and Canon Law, some by particular Laws and Customs; so the High Court of Parliament *suis propriis Legibus & Consuetudinibus subsistunt*. That Judges ought not to give any Opinion of a Matter of Parliament, because it is not to be decided by the

the Common Laws, but *secundum Legem & Consuetudinem Parliamenti*; and Coke says, *Ista Lex ab omnibus est querenda, à multis ignorata, à paucis cognita*. Now who shall adjudge this no Breach of Privilege, when the House of Commons, who are the proper Judges of their own Privileges, have adjudged it to be a Breach of their Privilege?

That it is to no Purpose to talk of the Form of the Commitment, if they have not Jurisdiction; but there is no such Thing as Seals of the House of Commons, and this Commitment during Pleasure, does not tend to *Villinage*, or *Slavery*, as was objected by Mr. Mountague, unless there could be a perpetual Parliament, which there cannot be now, so that might have been spared; and he was glad *Villinage* and *Slavery* were so much forgot, that Council did not know what it was, or at least, did not know how to apply it.

*Obj.* But it was objected, That they do no more in bringing their Action, than what is adjudged by the House of Lords they may lawfully do.

*Ans.* That a good Correspondence is to be with'd for between the Two Houses, by all true Lovers of their Country; but when they do not agree, there is no Way to settle their Jurisdictions, but first by *Conference*, and then by *free Conferences*; and the Lords might have desired a *free Conference*, when the Commons took this Matter under Examination, as the Commons did with the Lords in the Case of *Skimmers*, *Coke Rep.* 13. But it may be said, What if one House persists, and the other does so too? As to that, all *free Conferences* are open, and the People of England may be present, and will be Judges, and they will not chuse such Persons again as do commit, or do insist upon pretended Privileges: So if the Lords do exceed their Jurisdiction, the Commons may desire a *free Conference*; and if they do persist, the People will be Judges, and will chuse such a Parliament as will deal with them.

That the Lord *Shaftsbury's* Case is an Authority in Point of Want of Jurisdiction in that Court; and tho' he was a Member of the House, it does not alter the Case here, for there are many Instances that the *House of Commons* commit others than their own Members: There have been many Instances in both Houses, that they may commit Persons out of the House. 4 *Instit.* 23-24. *Moore* 57. *Ferrar's* Case in *Dyer* and *Plowden*, is a remarkable Instance, that no other Punishment could be inflicted for a Breach of Privilege; for he did not know that Indictment would lie for Breach of Privilege; and it would be a strange Thing that the House should have Power to examine into and judge of a Breach of Privilege, and yet have no Power to punish; for what signifies the Power to judge, without the Power to punish?

*Lord Chief Justice Holt.* That this Case does depend upon the Vote that is recited in the Speaker's Warrant of Commitment, which was to this Effect:

That it did appear to that Honourable House, that *John Paty*, of *Aylesbury*, has been guilty of commencing and prosecuting an Action at Common Law, against *W. White*, and others, late Constables of *Aylesbury*, for not allowing his Vote in an Election of Members to serve in Parlia-

ment, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

That he own'd himself to lie under two Disadvantages; one, That all the rest of the Judges do agree with his three Brethren, from whom he had the Misfortune to dissent. The other, That he oppos'd the Votes of the *House of Commons*, and did begin to think he might justify himself in resigning his Opinion to the rest; but that he valued more the Dictates of his own Conscience, than any Thing he could suffer in this World, and by that and his Judgment (tho' it were but weak) he would be guided.

That this was not such an Imprisonment as the Freemen of England ought to be bound by. And that it did highly concern the People of England, not to be bound by a Declaration of the *House of Commons* in a Matter that before was lawful.

That neither House of Parliament has a Power separately to dispose of the Liberty or Property of the People, for that can't be done but by the Queen, Lords, and Commons; and this is the Security of our *English* Constitution, which can't be altered but by Act of Parliament.

That there is a Crime charged by the Vote for commencing an Action; but sure that cannot be a Breach or Privilege, for an Original may be filed against a Member of Parliament, during the Time of Privilege, so that you don't molest him, and it is no Breach of Privilege; as it was resolved in *Sir George Binion's* Case, 14 *Ch.* II. for otherwise, by Lapse of Time in several Actions, he may be barr'd by the Statute of Limitations; so that if it be not a Breach of Privilege to commence an Action against a Member of Parliament, then how can it be so to commence an Action against the Constable of *Aylesbury*?

But then the Vote goes further, and says, For commencing and prosecuting an Action: But prosecuting may not be a Breach of Privilege neither; for entering and continuing is prosecuting, which may be done without a Breach of Privilege.

That it does not appear, that the Constable of *Aylesbury* has any Privilege above another Person, for no Man is presumed to be privileged, unless it be shewn; and he has no Privilege as Constable.

That the Vote goes yet further, and says, For not allowing his Vote in an Election of Members to serve in this present Parliament: But this can be no Crime.

That he admitted they were Judges of their own Privileges; but the Law must also be observed. By 2 *Ric.* III. *Fol.* 9. it appears, it was no Crime by the Common Law, to bring an Action, tho' never so malicious, false, or groundless, where it is adjudged, that there is no Punishment for it, because it was in a Method of Justice; but when Business began to increase, Costs were given against the Plaintiff, by 23 *Hen.* VIII. for bringing an Action causelessly. A Peer cannot have an Action of *Scandalum Magnatum*, where there is no Cause for the Action wherein he is charged with Scandal; so much the Law regarded the Right of bringing Actions.

That when Subjects have such a Right to bring Actions, it cannot be stopt by Privilege of Parliament; for no Privilege of Parliament can intend so far as to destroy a Man's Right.



That it has been adjudged a good Action by the Law of the Land, and that Damages may be recover'd for the Injury, in not allowing his Vote; and this Action is the same as *Asbby* and *White*, which lies before us, and if we consult the Records, we shall find it to be the same.

That the latter Part of this Vote is, That the prosecuting this Action is contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

That the Privileges of the House of Commons are limited, for there is no Privilege in Case of Treason, or Felony, or Breach of the Peace; for a Justice of the Peace may commit a Member for Breach of the Peace, and if he should be indicted for it, his Plea of Privilege would not be allowed.

That nothing can make a Privilege, that was not so before, (for the Breach of which a Man shall lose his Liberty) but an Act of Parliament.

That each House is Judge of their own Privileges, because they are more conversant with the Privileges of their own House; so the Judges decline it. But if they come incidently before the Courts of Law, they must determine it there.

That suppose the House of Commons had not meddled in this Matter, but the Defendants in this Action had pleaded to the Jurisdiction of this Court, that this was a Matter examinable only in the Parliament, and the Plaintiff had demurr'd, we must then have determined it, and be Judges then of their Privileges.

*Coke's 1 Inst. Lex & Consuetudo Parliamenti ab omnibus querenda, à multis ignorata, à paucis cognita*; and the Reason 'tis known by so few is, because they do not seek for it. We are bound to take Notice of the Customs of Parliament, for they are Part of the Law of the Land; and there are the same Methods of knowing it, as the Law in *Westminster-Hall*.

In *Clarendon's History*, Part 1. Fol. 310. He was Lord Chancellor of *England*, a Man of great Probity and Learning; his Observations touching Privileges of Parliament are these.

"It is not to be believed, how many sober, well-minded Men, who were real Lovers of the Peace of the Kingdom, and had a full Submission and Reverence to the known Laws, were imposed upon, and had their Understandings confounded, and so their Wills perverted by the meer Mention of Privilege of Parliament; which, instead of the plain and intelligible Notion of it, was, by the Dexterity of those *Beutifens*, and their Agents, and the Sottishness of the People, rendered such a Mystery as could be only explain'd by themselves, and intended as far as they found necessary for their Occasions, and was to be acknowledged a good Reason for any Thing that no other Reason could be given for. We are, say they, and have been always confess'd, the only Judges of our own Privileges, and whatsoever we declare to be our Privileges are such; otherwise, whosoever determines that it is not so, makes himself Judge of that whereof the Cognizance belongs only to us. And this sophistical Riddle perplexed many, who, notwithstanding the desperate Consequence they saw must result from such Logic, taking the first Proposition for true, which being rightly understood, is so, have not been

"able to wind themselves out of the Labyrinth of the Conclusion: I say, the Proposition rightly understood, they are the only Judges of their own Privileges; that is, upon the Breach of those Privileges which the Law hath declared to be their own, and what Punishment is to be inflicted upon such Breach; but there can be no Privilege of which the Law doth not take Notice, and which is not pleadable by and at Law.

The same Part, pag. 312. "But that their being Judges of their Privileges should qualify them to make new Privileges, or that their Judgment should create them such, as it was a Doctrine never before heard of, so it could not but produce all those monstrous Effects we have seen: When they have assembled to swallow all the Rights and Prerogatives of the Crown, the Liberties and Lands of the Church, the Power and Jurisdiction of the Peers; in a Word, the Religion, Laws, and Liberties of *England*, in the bottomless and insatiable Gulph of their own Privileges." That he had yet a greater Authority than this, the Opinion of King *Charles I.* in his Answer to the nineteen Propositions from both Houses of Parliament, in *Lord Clarendon's History*, first Part, 498. which Answer is in the King's own Words in *Rushworth's Collections*, 3 Vol. Part the 1st. 725, 730, 731.

"That tho' the bringing this Action be contrary to the Declaration, it does not follow, therefore, that it must be a Breach of Privilege; for this Vote has not obtained the Authority of a Law, and they have no more Power to declare the Law, than they have to make a Law.

That if bringing an Action is a Breach of Privilege, why was not *Asbby* laid on? He prosecuted to Judgment and Execution; but these Persons are committed for commencing an Action.

How can the bringing an Action in one Court be a Contempt to another?

If a Man that has a Privilege in one Court is sued in another, he shall have his Privilege: But it is no Contempt in the Plaintiff that he sues in another Court, and there is no Punishment for it; much less can it be a Contempt to the House of Commons, where no Action can be brought.

That he admitted, the House of Commons may commit any Person, and for any Crime, because they may impeach any Person for any Crime whatsoever; but that Course is seldom taken, unless where the Crime requires a strict Prosecution, and very much concerns the Publick.

That the Lord *Shaftsbury's* Case is not like this; for he was a Member of the House, and it was for a Contempt in the House.

The House may at any time commit a Man for a Contempt in the Face of the House; whereas the Prisoners are committed not for a Breach of Privilege or Contempt, but because they have brought their Actions which are legal, and so adjudged by the Lords in the Writ of Error.

That he did not question but that the Warrant was a good Warrant.

That *Lex & Consuetudo Parliamenti* is as much the Law of the Land, as any other Law. 'Tis the Law gives the Queen her Prerogative: 'Tis the



the Law gives Jurisdiction to the House of Lords; and 'tis the Law limits the Jurisdiction of the House of Commons.

That if the Ecclesiastical Court exceed their Jurisdiction, a Prohibition will lie; and even the King's Acts, if contrary to Law, are void.

He insisted, That the Lord Banbury's Case was a great Authority for him.

He petitioned the House of Lords to sit, and also to have the King's Leave. The Lords determined he was not a Lord; yet when he was brought upon an Indictment by the Name of Charles Knowles, Esq; he here pleaded, and insisted, That he was a Peer; which Plea was allowed, and he was not tried.

Tho' the Lord Chief Justice was so clear in his Judgment, yet the other three Judges being of a contrary Opinion, the Majority prevailed; and the Prisoners were remanded to Newgate.

Mr. Lechmere moved, That the Judgment might be entered upon Record.

Lord Chief Justice Holt asked the Clerk of the Crown, How they entered the Judgment in these Cases? Who answered, That they never make up any Roll, but only enter a Remittitur generally upon the Back of the Writ. Lord Chief Justice Holt told him, That of right he ought to make up a Roll, (and as he was informed he had the Fees allowed for making up the Roll) and then bid the Council come to his Chambers, and bring Precedents; and afterwards the Judgment was entered in this Manner.

The Judgment: *Quia Cognitio Cause Captionis & Detentionis predictæ non pertinet ad Curiam Domine Regine, Ideo Remittitur.*

Upon the Commitment of these five Aylesbury Men, and their being remanded to Newgate again, the House of Lords drew up the following Representation and Address, viz.

*The Humble Representation and Address of the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled, presented to her Majesty the fourteenth Day of March, 1704. and her Majesty's most gracious Answer thereunto: With their Lordships Thanks for the same. Together with the Papers annexed to the said Address, and laid before her Majesty.*

Die Martii 13 Martii, 1704.

**W**E your Majesty's most Dutiful and Loyal Subjects, the Lords Spiritual and Temporal, in Parliament assembled, are under an unavoidable Necessity of making our humble Application to your Majesty, upon an Occasion, which, as it is very grievous to us, so we fear it may be uneasy to your Majesty: But the Proceedings of the House of Commons, in relation to five Burgesses of the Town of Aylesbury, John Paty, John Oviat, John Paton, Henry Basse, and Daniel Horne, have been so very extraordinary, that the Consequences of such Proceedings may prove so fatal to the Properties and Liberties of the People of England, and so directly tend to the Interruption of the Course of Justice, to the

eluding the Judicature of Parliament, and to the Diminution of your Royal Prerogative, that we cannot answer it to your Majesty, to the Kingdom, and to our selves, without setting them before you in a due Light.

One Matthew Asby, a Burgess of the Borough of Aylesbury, brought an Action upon the Case at Common Law, against the Constables of the Town of Aylesbury (being the proper Officers to return Members to serve in Parliament for that Place) for having by Contrivance fraudulently and maliciously hindered him to give his Vote at an Election.

In this Action a Verdict was found for him; but Judgment was given against him in your Majesty's Court of Queen's-Bench, which was reversed upon a Writ of Error brought in Parliament; where he obtained Judgment to recover his Damages for the Injury, and afterwards had Execution upon that Judgment.

The five Persons above-named, being Burgesses of the same Borough, and having (as they conceived) had the like Wrong done them by the Constables there, and supposing the Law to be equally open to all Englishmen, did severally commence and prosecute Actions against those Officers, in order to recover their Damages.

And for so doing, they were sent for to the Bar of the House of Commons, and committed Prisoners to Newgate, the fifth Day of December last, during the Pleasure of the House of Commons, as having acted contrary to the Declaration, in Contempt of the Jurisdiction, and in Breach of the Privileges of that House.

These Proceedings are wholly new and unprecedented. It is the Birth-right of every Englishman, who apprehends himself to be injured, to seek for Redress in your Majesty's Courts of Justice: And if there be any Power can controul this Right, and can prescribe when he shall, and when he shall not be allowed the Benefit of the Laws, he ceases to be a Freeman, and his Liberty and Property are precarious.

The Crown lays Claim to no such Power; and we are sure the Law has trusted no such Authority with any Subjects whatsoever.

If a Man mistakes his Case, in believing himself to have a good Cause of Suit when he has not, if he mistakes his Court, by applying to an incompetent Jurisdiction, he will fail of Relief, and be liable to Costs, but to no other Punishment: He is not guilty of a Crime, nor is it a Contempt of the Court that has the proper Jurisdiction.

But these Men were guilty of no Mistake; the Point of Law was settled by the Judgment of that Court, which is allowed to be the last Resort; and this will continue to be the Law, 'till it be altered by the Legislative Authority. They saw their Neighbour quietly and unmolested reap the Fruit of the Judgment he had obtained; and yet, for pursuing the same Remedy, they are condemned to an indefinite Imprisonment, during the Pleasure of the House of Commons.

This Method does introduce an Uncertainty and Confusion, never before known in England. The most arbitrary Governments cannot shew

\* Die Mercurii, 14 Martii. It is ordered by the Lords Spiritual and Temporal, in Parliament assembled, That the Representation and Address this Day presented to her Majesty, with her Majesty's most Gracious Answer thereunto, and the Thanks of this House for the same, together with the Papers annexed to the said Representation and Address, and laid before her Majesty, shall be forthwith printed and published. *Matth. Johnson, Cler' Parliamentor*



more direct Instances of Partiality and Oppression.

The Point of Law is judicially settled; and yet the House of Commons take upon them to punish Men, by Imprisonment, for endeavouring to have the Benefit of what is so established for Law.

We humbly observe to your Majesty, That the first Thing they alledged in the Warrant of Commitment, as the Offence of these five Persons, is, That those Actions were brought contrary to a Declaration of the House of Commons.

It was never yet heard, (when there was a House of Lords in being, and a King or a Queen upon the Throne) that the House of Commons alone claimed a Power, by any Declaration of theirs, to alter the Law, or to restrain the People of *England* from taking the Benefit of it; nor have their Declarations any such Authority, as to oblige Men to submit to them at the peril of their Liberty.

If they have such a Power in any Case, they may apply it to all Cases as they please; for when the Law is no longer the Measure, Will and Pleasure will be the only Rule.

The Certainty of our Laws is that which makes the chief Felicity of *Englishmen*: But if the House of Commons can alter the Laws by their Declarations, or (which is the same thing) can deprive Men of their Liberty, if they go about to take the Benefit of them, we shall have no longer Reason to boast of that Part of our Constitution.

The next thing alledged in the Warrant is, That the commencing and prosecuting these Actions was a Contempt of the Jurisdiction of the House of Commons.

Such a Jurisdiction was never claimed by the House of Commons, 'till upon this Occasion; and if this Novelty of a Jurisdiction be founded on their new Authority of declaring, they will stand and fall together.

The House of Commons have for a long time exercised a Jurisdiction over their own Members, by allowing or disallowing their Elections, as they saw Cause: But they have never before entertained a Notion, That they had a Jurisdiction over their Electors, to determine (finally and exclusively of all other Courts) the particular Rights of those to whom they owe their Being.

Your Majesty's Royal Writ commands, That the several Electors make choice of Persons to represent them in Parliament, in order to do and consent to such things as should be ordained there, relating to the State and Defence of the Kingdom and the Church, for which the Parliament is called: And they obey the Command, in proceeding to chuse Members for the Parliament then summoned; but neither the Writ which requires them to chuse, nor the Indenture by which the Return is made, import any thing whereby it may be inferred, That the Electors put into the Power of their Representatives their several Rights of Election, to be finally disposed of at their Pleasure.

It was an Interest vested in them by Law before the Election, and which the Law will preserve to them, to be exercised again in the like Manner, when your Majesty shall be pleased to call another Parliament.

It was not possible for the Electors to suspect, that such a Pretence would ever be set up by their Representatives, when in the Course of so many Ages the House of Commons had never taken upon them to try or determine the Right of any particular Elector, unless incidently, and only in order to decide a Question, of the Title of some Member of their own House to sit amongst them.

The Right of Election is a legal Interest incident to the Freehold, or founded upon Custom, or the Letters Patents of your Majesty's Royal Ancestors, or upon particular Acts of Parliament, and must be tried and determined like other legal Interests: And this Consideration does manifestly shew the Absurdity of pretending, That such Rights can be decided by the House of Commons, where there is neither a Power of administering an Oath, in order to discover the Truth, nor a Power of giving Damages, which is the only Reparation the Elector is capable of receiving in such a Case. Therefore, if the Electors, when they are deprived of their Rights, have no Place to resort to, but the House of Commons, the Right of Election would be a Right without a Remedy, which indeed is no Right at all.

And it is put into the Power of the Officers, who have the Return of Members to serve in Parliament, to reject the Votes of as many Electors as they please, without being liable to make any Reparation in Damages to the Parties; which is a Notion not very likely to preserve the Freedom and Impartiality of Elections.

The third thing alledged against these Men in the Warrant of Commitment is, That by bringing these Actions they have broken the Privilege of the House of Commons.

A Breach of the Privileges of Parliament is certainly a great Offence; and, of all others, the House of Lords ought to be the last who should go about to lessen or excuse it, as having a like Interest with the Commons in the Preservation of the Privileges of Parliament.

But however it might seem the Interest of the Lords to be silent, while the House of Commons are setting a-foot new Pretences of Privilege, because they may share in the Advantage; yet we think it our Duty and our Interest to do all we can to preserve the Constitution entire, and not to sit quiet when we see Innovations attempted, which tend to the Diminution of the Rights of the Crown, or to the Prejudice of the Subject: Because the best and surest way to preserve the rightful Privileges of Parliament, is to abide by those that are certain and known; and it is not in the Power of either, or both Houses, to create new Privileges to themselves.

It never was thought a Breach of the Privileges of Parliament, to prosecute an Action against any Man, who was not entitled to Privilege of Parliament; and therefore, since the late Constables of *Aylesbury* had no Title to Privilege of Parliament, at the Time when those Actions were commenced or prosecuted, we cannot imagine upon what Foundation the pursuing these Actions can be voted a Breach of Privilege by the House of Commons.

It seems very necessary it should be known upon what Rule this Pretence is grounded, That the People of *England* may be at a Certainty, and see some Limits set to the Claims of Privilege.



lege. To serve the turn, it has been said, There are privileged Cases, as well as privileged Persons; but no Instance has been produced, whereby this Distinction can be applied to justify these Commitments.

Actions at Common Law have been brought upon false Returns and double Returns of Members to serve in Parliament, as in the Cases of Sir Samuel Barnardiston and Mr. Onslow, which proceeded to Judgment; and a Writ of Error was brought in one of them, and the Plaintiffs could not prevail in either of those Suits; and yet it was never pretended, That the commencing or prosecuting those Actions was a Breach of Privilege of Parliament, nor were the Persons concerned in them imprisoned or censured, tho' there was a much greater Colour for such a Pretence in those Cases, because the Question there directly concerned the Right of Sitting in Parliament; and consequently those would have been indeed privileged Cases, if any such Distinction had been once thought of in those Days: Whereas in the Actions brought by these five Men, neither the Plaintiffs nor Defendants were Members of Parliament, nor did the Actions relate in any manner to the Right of Sitting there.

The Opinion of the House of Commons at that time was very different from what it is now.

When the Judgment of the King's-Bench (where Sir Matthew Hale sat then Chief Justice) which passed in favour of Sir Samuel Barnardiston, That the Action was maintainable, was reversed in the Exchequer-Chamber, the House of Commons was so far from thinking it for their Advantage, to have their Members deprived of the Benefit of the Common Law, that in the Year 1679 a Committee was appointed to enquire touching the reversing that Judgment, and by whose Procurement and Solicitation, and by what Ways and Means, the same was reversed, and the Names of the particular Judges that were concerned: And when afterwards that Judgment in the Exchequer-Chamber was affirmed in Parliament, the House of Commons never thought themselves secure against the Corruptions of the Officers, who were to take the Poll, and make Return at Elections, till they had got an Act in the seventh and eighth Years of the late King, which gave a Remedy in Westminster-Hall for false and double Returns; so little contented were they in their own Cases with the Jurisdiction of the House of Commons, and the Remedy to be had there, which now they so fiercely contend their Electors should entirely acquiesce in: And we cannot but think it manifest Partiality in those Gentlemen, to go about by such violent Means, to deprive their Electors of recovering of Damages, when they are wronged in being deprived of giving Votes, since they thought it necessary for themselves to have that Advantage when they are injured in their own Elections.

The Sufferings of these unfortunate Men have not ended here, and the Rights of the free-born Subjects of England have received a further and no less dangerous Wound in their Persons.

These five Men having endured a long and chargeable Imprisonment, and despairing of their Liberty any other way, were advised to sue out

Writs of *Habeas Corpus* returnable in your Majesty's Court of Queen's-Bench, hoping to obtain their Discharge by the Help of that Court, where the Judgment ought to be given according to the Laws of the Land, without regard to any Votes, or Declarations, or Commands to the contrary: But this Endeavour proved unsuccessful, and they were remanded to Newgate by three of the Judges of that Court, contrary to the Opinion of the Lord Chief Justice Holt.

We shall not presume to offer any Opinion to your Majesty, upon Occasion of this Judgment, at present, because it is not regularly brought before the House; and we only mention it, because the House of Commons took such Offence at the bringing these Writs of *Habeas Corpus*, that, on the twenty-fourth of February last, they voted, That whoever had abetted, promoted, countenanced, or assisted the Prosecution of those Writs, were Disturbers of the Peace of the Kingdom, and had endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons in Parliament.

This is a heavy Charge; and if it be so criminal a thing for a Prisoner to pray a *Habeas Corpus*, it does not only affect those who are at present concerned, but ought to touch every Commoner of England, in the most sensible manner.

Liberty of Person is of all Rights the most valuable; and of which, above all other things, the Law of England is most tender, and has guarded with the greatest Care, having provided Writs of several kinds, for the Relief of Men restrained of their Liberty upon any Pretence, or by any Power whatsoever; that so in every Case they may have some Place to resort to, where an Account may be taken of the Reason and Manner of the Imprisonment, and the Subject may find a proper Relief according to his Case.

No Crime whatsoever does put an Englishman into so miserable a Condition, that he may not endeavour, in the Methods of Law, to obtain his Liberty; that he may not, by his Friends and Agents, sue out a *Habeas Corpus*, and have the Assistance of Solicitors and Council, to plead his Cause before the Court where he is to be brought.

The Court is bound by the Law to assign him Council, if there be Occasion, and to give Judgment upon his Case, as it stands upon the Return of the *Habeas Corpus*, and to remand, discharge, or bail the Prisoner, as the Cause of his Commitment appears there sufficient or insufficient in Law; and if what is alledged as the Cause of Imprisonment appears to be no Crime in Law, it is not the Authority of those who made the Commitment that can excuse that Court for remanding the Prisoner.

This is the Law of England: But according to these Resolutions of the House of Commons, if a Man has the Unhappiness (tho' through Ignorance or Mistake) to do an Act which shall be voted a Breach of Privilege, he becomes in a worse Condition than any Felon or Traytor; his Confinement makes it impossible for him in Person to solicit and procure a *Habeas Corpus*, and if any have Charity enough to assist him, or to plead for him, in order to shew to the Court the Insufficiency of the Commitment in Matter of Law, they become liable to lose their own

U u Liberty,



Liberty, and are involved in the same Guilt of Breach of Privilege: So that let the Imprisonment be upon the most trifling Occasion imaginable, if it be by Order of the House of Commons, every Commoner must submit to it without Redress; no Friends can help them, no other Authority can deliver them, till your Majesty shall put an End to that Session.

The Lords have as just a Concern, as the House of Commons can have, to maintain the Authority, and keep up the Awe of Parliamentary Commitments: And they will always do it, as far as Justice and the Usage of Parliaments will allow.

There have been Cases, particularly that of the Earl of *Shaftsbury*, where Persons committed by the House of Lords, even Members of that House, have sued out Writs of *Habeas Corpus*; and upon the Returns of those Writs, have been brought before the Court of King's-Bench, and their Council have been heard on their behalf: And yet no Censure ever passed upon them for these Endeavours to obtain their Liberty, or upon their Agents, Solicitors, or Council.

The House of Commons formerly acted with more Reserve upon so nice an Occasion, as the Liberty of the Subject: For in the Year 1680, when a Writ of *Habeas Corpus* was served upon the Serjeant at Arms attending the House of Commons, in the behalf of Mr. *Sheridon*, who stood committed by Order of that House; after the House was made acquainted, That such a Writ was served upon their Officer, and had entered into very long Debates upon the Matter, they did not think fit to interpose, nor to pass any Censures upon the Persons concerned in procuring the Writ, or in appearing in behalf of the Prisoner; but left the Serjeant at Arms at liberty to obey the Command of the *Habeas Corpus*; which he did accordingly, by carrying his Prisoner before the Judge, where the *Habeas Corpus* was returnable.

The House of Commons have in former Ages shewn a great and steady Concern for the Freedom of the Persons of their Fellow-Subjects: And upon their Petitions many excellent Laws have been made to protect Liberty against all unlawful Restraints by any Authority, even that of the Crown: But now it is insisted, That their own Imprisonments are out of the Reach of those Laws, and their Legality not to be examined.

In the third Year of the Reign of your Royal Grandfather, the House of Commons made a noble Stand for the *English* Liberties, and shewed, by undeniable Evidence, that the Causes of the Imprisonment must be expressed in all Cases, that so it might appear, upon the Return of the *Habeas Corpus*, whether they were sufficient in point of Law. *Vide Vol. 7. P. 116, &c.*

It could not then have been imagined, That the Successors of those Men would ever have pretended to an arbitrary and unlimited Power of depriving their Fellow-Subjects of their Liberties, or to vote it to be criminal so much as to enquire into the Validity of their Commitments.

There is another Occasion of Offence, which the House of Commons have taken against *John Paty* and *John Oviat*, two of these Prisoners, who thinking themselves wronged in their being remanded to *Newgate*, by the Opinion of the major Number of the Judges of the Court of Queen's-Bench, humbly petitioned your Majesty

for a Writ of Error, in order to bring this Judgment before your Majesty in Parliament: And it is certain the Subject is never concluded by any Judgment, till he comes to the last Resort fixed by Law in this Case.

The House of Commons being informed of these Petitions, came to a Resolution, which they laid before your Majesty, That the Commitments of that House were not examinable in any other Courts whatsoever; That no Writ of Error lay in this Case; and that as they had expressed their Duty to your Majesty in giving Dispatch to the Supplies, so they had an entire Confidence in your Majesty, That you would not give Leave for the bringing any Writ of Error.

The first Position in this Vote is very general, and the Consequences of it are plain; if the Commitments of the House of Commons are examinable in no other Place, then no Man in *England*, how innocent soever, is secure of his Liberty longer than the House of Commons pleases; and Men may be allowed at least to wish that it were not so, tho' they may have a very high Opinion of the Justice of that House.

It has been held as an undeniable Maxim, That whoever executes an illegal Command, to the Prejudice of his Fellow-Subjects, must be answerable for it to the Party grieved.

Let it be supposed then, That an Action of false Imprisonment was brought against the Serjeant of the House of Commons, and that the Defendant justifies his taking the Plaintiff into Custody, by virtue of a Warrant of that House, and it appears upon the Face of the Warrant, That the Cause of the Commitment was no Crime in Law, and the Plaintiff demurs, what must the Judges do in such a Case? Will it be possible for them to avoid examining into the Commitment, and so give Judgment one way or other? Or can it be pretended, That a Writ of Error may not be brought upon such a Judgment? And is not the Court, before which the Writ of Error is brought, under a Necessity to do Justice thereupon, as the Law requires?

As to the second thing they have taken upon them to assert, That no Writ of Error lies in the Case; we affirm to your Majesty with great Assurance, That by our Constitution the House of Commons have no Right or Pretence to determine whether that be so or not. The Right of judging when a Writ of Error is properly brought, is by Law entrusted to that Court to which the Writ of Error is directed; and therefore we shall not at present say any thing to your Majesty in an extrajudicial way, and before the proper Time, as to that Point, Whether a Writ of Error brought upon a Judgment for remanding Prisoners upon a *Habeas Corpus*, can be maintained.

Which way that Question will be decided hereafter, when the Writs of Error are returned into the Parliament, is not at all material, in respect to the Petitions of the Prisoners which now lie before your Majesty: For unless your Majesty be pleased to grant the Writs of Error according to their Prayer, the Matter cannot come to the proper Decision in Parliament, and Justice will be manifestly obstructed.

Whether the Writs of Error ought to be granted, and what ought to be done upon the Writs of Error afterwards, are very different Things.

Things. The only Matter under your Majesty's Consideration is; Whether in Right and Justice the Petitioners are not entitled to have the Writs of Error granted?

We are sure, the House of Commons, in the Year One thousand six hundred eighty-nine, was of Opinion, That a Writ of Error, even in Cases of Felony and Treason, is the Right of the Subject, and ought to be granted at his Desire, and is not an Act of Grace and Favour, which may be denied or granted at Pleasure: So that as far as the Opinion of the House of Commons ought to have Weight in such a Question, (whatever the present Opinion of that House is) they then thought a Writ of Error was the Right of the Subject in Capital Cases (where only it had been at any Time doubted of.)

But that it is a Writ of Right in all other Cases, has been affirmed in the Law-Books, is verified by the constant Practice, and is the Opinion of all your present Judges, except Mr. Baron Price, and Mr. Baron Smith.

The Law, for the better Protection of Property and Liberty, has formed a Subordination of Courts, that Men may not be finally concluded in the first Instance: But this is a very vain Institution, if they be left precarious in the Method of coming to the Superior Court.

All Suits are begun, as well as carried on, by the Authority of your Majesty's Writs, and the Subject has a like legal Claim to all of them.

The Petition for a Writ of Error returnable in Parliament, is only Matter of Form, and Respect to your Majesty (like the Petitions which the Speaker makes in the Name of the Commons, at the Beginning of every Parliament, for those Privileges which they do not believe to depend upon the Answer to those Petitions) and is no more to be refused than any other Writ throughout the Cause.

To affirm the contrary, is to allow an arbitrary Latitude to intercept Justice, and to make it depend upon private Advices, and extrajudicial Determinations, Whether any Causes at all shall be brought to Judgment before the High Court of Parliament.

These Things being considered, how extremely surprizing is an Address from such a Body as the House of Commons, That your Majesty would not give Leave for such a Writ.

And no less surprizing is what they insinuate, as the Reason of their Confidence in your Majesty, that you would hearken to such an Address, That they have given Dispatch to the Supplies: They proceeded surely in the Matter of the Supplies with a nobler Aim, for the Safety of your Majesty's Crown and Person, and for the delivering the Kingdom from the Oppression of French Power, employ'd to set an unjust Pretender upon your Majesty's Throne.

These are good Reasons for disposing of the People's Money. Their Liberties, and all that is valuable to them, depend entirely upon the good Success of the War, and they have used, in all Ages, to part freely with their Money for the Defence of their Liberties and Properties, and the removing of Grievances and Oppressions.

But this is the first Time a House of Commons have made use of their having given the People's Money, as an Argument why the Prince should deny Writs of Right to the Subject, obstruct the Course of Justice, and deprive them of their Birth-rights.

On the Twenty-sixth Day of February, the House of Commons proceeded to carry on their Resentments to greater Extremities, and voted, That the Gentlemen who pleaded as Council for the Five Prisoners, upon the Returns of the Writs of *Habeas Corpus*, and the Agents and Solicitors who assisted them, were guilty of a Breach of Privilege, and ordered them to be taken into Custody, which Order has been executed.

This seems to be so great an Excess, that it is hard to find Words proper for expressing it. When *Cromwell* committed Mr. *Maynard* to the Tower, for assisting one *Coney* as his Council, upon a *Habeas Corpus*, a celebrated Author expresses the Detestation due to such a Fact, in these Words: "It was the highest Act of Tyranny that ever was seen in England: It was shutting up the Law itself close Prisoner, that no Man might have Relief from or Access to it."

But as strange and unjustifiable as this appears, we beg Leave to take Notice of another Thing, yet more irregular (if it be possible): While the Matter was depending before your Majesty upon the Petitions for Writs of Error; after the House of Commons had made an Address to your Majesty, That you would not give Leave for the bringing Writs of Error; after your Majesty had, by your gracious Answer, signified to them, "That this Matter, relating to the Course of Judicial Proceedings, was of the highest Importance, and therefore your Majesty thought it necessary to weigh and consider very carefully, what was proper for you to do;" and after they had voted to take this very Answer of your Majesty's into Consideration: The Day following, they ordered the Five Prisoners to be removed from *Newgate*, and taken into the Custody of the Serjeant at Arms attending the House of Commons; and this Order was executed at Midnight, with such Circumstances of Severity and Terror, as has been seldom exercised towards the greatest Offenders.

Your Majesty is the only proper Judge how highly disrespectful this Action is to your Royal Person and Authority.

But it concerns us to say, That such a Proceeding tends directly to the depriving the Petitioners of that Justice, which they were endeavouring to obtain by Means of the Writs of Error.

While your Majesty was deliberating how to put an End to a Matter, which they only had made difficult by an unreasonable Address, the House of Commons rightly apprehended, That Justice would prevail with your Majesty over all other Considerations, and therefore (as far as possible to disappoint the Prisoners of the Fruit they expected from these Writs of Error, when granted) they transferred them, in the mean Time, to another Prison.

This Practice of removing Prisoners from one Custody to another, has been ever complained of, as manifest Oppression, and most evidently destructive of the Liberty of the Subject: It is a Mischief provided against in express Words, by the Act made in the Reign of your Royal Uncle King *Charles the Second*, *For better securing the Liberty of the Subject*; That if any Person, being a Subject of this Realm, shall be committed to any Prison, or in Custody of any Officer whatsoever, for any criminal, or supposed criminal Matter, That the Person shall not be removed from the said Prison or Custody, into the Custody of any



any other Officer (unless it be by *Habeas Corpus*, or some other legal Writ;) and this upon the great Penalties mentioned in that Act. The Penalties in the Act were new, but the Law of England was the same before the making it. The shifting of Men from one Prison to any other, while they are using Means in a Course of Law to recover their Liberty, is inexcusable Cruelty, and against the plain Rules of Natural Justice, for by such Artifices, Imprisonments, however unlawful, might be made perpetual, and the Subject, as he was at the Point of being discharged from one Prison, might be, without End, removed to another.

May it please your Majesty, your dutiful Subjects, the Lords Spiritual and Temporal, were so solicitous to avoid any Thing which might give a Pretence to interrupt the necessary and early Provision for the War, in order to improve the wonderful Successes God had given to your Arms: That tho' they were sensible the Imprisonment of these Men, in the Manner, and upon the Pretences above-mentioned, was a manifest Attempt to elude the Judicature of Parliament, and of pernicious Example to the Liberty and Property of the Subject, yet they forbore to take Notice of it, 'till they were in a Manner enforced by Petitions from the Prisoners, presented the Twenty-fourth of February last, and by the unjustifiable Proceedings of the House of Commons the same Day, which we have already mentioned to your Majesty.

But then the Lords found it absolutely necessary, to enter into a Consideration of the whole Matter, as it appeared to them, and upon the Twenty-seventh of February they came to the following Resolutions.

*Resolved*, That neither House of Parliament have Power by any Vote, or Declaration, to create to themselves new Privileges, not warranted by the known Law and Custom of Parliament.

*Resolved*, That every Freeman of England, who apprehends himself to be injured, has a Right to seek Redress by Action at Law, and that the commencing and prosecuting an Action at the Common Law, against any Person who is not entitled to Privilege of Parliament, is no Breach of the Privilege of Parliament.

*Resolved*, That the House of Commons, in committing to the Prison of Newgate, John Patey, John Oviat, John Paton, Henry Basse, and Daniel Horne, for commencing and prosecuting Actions at the Common Law, against the late Constables of Aylesbury, for not allowing their Votes in the Election of Members to serve in Parliament, upon Pretence, that their so doing was contrary to a Declaration, a Contempt of the Jurisdiction, and a Breach of the Privilege of that House, have assumed to themselves alone a Legislative Authority, by pretending to attribute the Force of a Law to their Declaration, have claim'd a Jurisdiction not warranted by the Constitution, and have assumed a new Privilege, to which they can shew no Title by the Law and Custom of Parliament, and have thereby, as far as in them lies, subjected the Rights of Englishmen, and the Freedom of their Persons, to the arbitrary Votes of the House of Commons.

*Resolved*, That every Englishman, who is imprisoned by any Authority whatsoever, has an undoubted Right, by his Agents or Friends, to apply for, and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due Course of Law.

*Resolved*, That for the House of Commons to censure or punish any Person for assisting a Prisoner to procure a Writ of *Habeas Corpus*, or by Vote, or otherwise, to deter Men from soliciting, prosecuting, or pleading upon such Writ of *Habeas Corpus*, in Behalf of such Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the necessary Assistance to the Prisoner upon a Commitment of the House of Commons, which has ever been allowed upon all Commitments, by any Authority whatsoever.

*Resolved*, That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for, (tho' at the Request of either House of Parliament) the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta*.

These Resolutions were delivered to the Commons at a Conference, the Twenty-eighth of February, and they took Time to consider of them 'till the Seventh of March; upon which Day, at their Desire, a Second Conference was had, and tho' it was too apparent by what was delivered by the Commons at that Conference (which consisted of injurious Invectives against the House of Lords, and tedious Recitals of Precedents, in no sort applicable to the present Subject of Debate) that their Design was either to provoke the Lords to such a Degree, as might necessitate them to break off all Correspondence, or by engaging them in new Matters, to draw Things to such a Length, as might prevent the bringing these Debates to any Issue during the Session: Yet the Lords immediately desired a Free Conference, which was afterwards had with the Commons.

We are so desirous that your Majesty should be made fully acquainted with all the Passages relating to this Dispute between the Two Houses, that we humbly beg Leave to annex to this our Representation, what passed at the First and Second Conferences; and also (as far as we have been capable of recollecting in so short a Time) the Substance of what was said at the free Conference, and in our Debates, in Maintenance of the Resolutions of the House of Lords.

But we take it to be a Duty necessarily incumbent on us, to observe to your Majesty the Manner in which we have been treated by the House of Commons at these Conferences; so that from thence your Majesty, according to your great Wisdom, may judge to what such Proceedings do naturally tend. They told us, That the Judicature of the House of Lords was unaccountable in its Foundation, and inconsistent with the Constitution: If they mean it is so ancient, that no Account can be given of its Foundation, it is true, but there is Reason to believe it began with the Monarchy, and we are sure it has continued without Interruption, unless during that unhappy Interval, when a pretended House of Commons destroyed the Church and the Monarchy, as well as the House of Lords: As many Ages as the Constitution of the English Government has lasted, this Judicature has consisted with it, and form'd a noble and necessary Part of it; and therefore these Gentlemen will hardly be believed against so long an Experience, That it is inconsistent with the Constitution.

They also charged the Lords in direct Terms, with usurping the Hearing Appeals, with making Advances upon the Constitution, with contriving



to bring Liberty and Property into the bottomless and insatiable Gulf of the Lords Judicature, and with direct Reproaches, as to the Manner in which that Judicature has been exercised, and in the most contemptuous Way, told us, They forbore to mention the Instances, because they hoped we would reform.

We desire no other Judge but your Majesty, how such a Treatment of us becomes these Gentlemen; and we dare appeal to all your Subjects, for Witnesses of the irreproachable Manner of administering Justice in the House of Lords.

We hope the great Displeasure the House of Commons has conceived against us, may prove of some real Service, and of useful Caution to your Majesty, for it has drawn them directly to own (what was but too visible before) that they are aiming at more Power, and a larger Share of the Administration, than is trusted with them by the Nature of our Government. They directly complain'd, That by the Constitution, the Judicature, in the last Resort, was not placed in the same Hands with the Legislature; tho' they cannot shew it to be so, in any Country where the Government is not arbitrary, and the Prince's Will the Law. They have been long endeavouring to break in upon the Lords Share in the Legislature, of which we could mention too many Instances to your Majesty. From an ancient Claim, That Aids to the Crown are to begin in the House of Commons, and that the Lords could not alter the Sums, they have of late Years pretended (but without any Reason, and against the known Usage of Parliaments) that we could make no Alterations in any Parts of a Money-Bill, tho' it have no relation to the Money: And upon that Foot, when they have had a Mind to get any thing passed into a Law, of the Reasonableness of which they have despair'd to convince the Lords, they have tack'd it to a Money-Bill, in order to put the Crown and the Lords, under that unhappy Necessity, either to agree to a Law they might think prejudicial to the Publick, or to lose the Money, which perhaps, at that Time, was absolutely necessary to the saving the Kingdom.

By this Method they assume to themselves the whole Legislative Authority, taking in Effect the Negative Voice from the Crown, and depriving the Lords of the Right of deliberating upon what is for the Good of the Kingdom: For this Reason the Lords had, in a very solemn Manner, resolv'd never to suffer such Impositions for the future, let the Importance of the Bill be never so great. This Resolution was well known, and yet in this present Session (as appears by the printed Votes of the Twenty-eighth of November last) a great Number of the Gentlemen of the House of Commons, to the manifest Danger of disappointing the Supplies of the Year, which must have been the Ruin of the whole Confederacy, and delivering up of Europe into the Hands of France, made an Attempt to tack to the Land-Tax a Bill which had been rejected in Two precedent Sessions of Parliament.

Thus the House of Commons have formerly set on Foot several Attempts, against that Share in the Legislature which is placed in the Lords: But this is the First Time they have published their Desire, to be let into the Judicature of Parliament.

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Whatever they would insinuate upon this Occasion, we desire not to meddle with the Choice of the Commons Representatives, we willingly leave that Matter where it is: And in what Manner it is exercised there, how impartially and how steadily, is so well known by Experience to most Parts of the Kingdom, and so universally understood, that the People will be extremely desirous their Estates and Properties should be subject to such Determinations.

It is not strange the free Conference ended without Success, when the Commons came to it with such a Temper as appears by the Votes of the Eighth of March, made after they themselves had consented to the free Conference: If those Votes had been publish'd soon enough, it would have fully convinced the Lords how vain a Thing it was to confer with them further upon the Matters in Debate at the former Conferences; for not content with what they had done before, upon Information, that their Serjeant had been served with Two Writs of *Habeas Corpus*, returnable before the Lord Keeper, in Behalf of Mr. Mountague and Mr. Denton, Two of the Gentlemen who had been of Council with the Five Prisoners, they came to a Resolution, That no Commoner, committed by them for Breach of Privilege, or Contempt of the House, ought to be, by *Habeas Corpus*, made to appear before any other Judicature, and required their Serjeant to make no Return, or yield any Obedience to those Writs; and that for such Refusal he had the Protection of the House of Commons.

It has been always held the undoubted Prerogative of the Crown, to have an Account of the Reason why any Subject is deprived of Liberty, and it has ever been allow'd, That by the known Common Law, it is the Right of every Subject under Restraint, upon Demand to have his Writ of *Habeas Corpus*, and thereupon to be brought before some proper Court, where it may be examined, whether he be detain'd for a lawful Cause: And the Statutes made in the Reign of your Royal Grandfather, and your Royal Uncle, have enacted, That in all Cases, Writs of *Habeas Corpus* be granted and obey'd by the respective Officers upon great Penalties.

But these Votes import a direct Repeal of those Laws, as to all Persons committed by the House of Commons.

It is no longer worth disputing, Whether a Person committed by them, tho' for a Fact which appears to be both lawful and necessary, may be delivered by any Court; for by this new Law he shall never be brought thither, and the Serjeant is not only warranted, but commanded openly to condemn your Majesty's Royal Writs of *Habeas Corpus*, brought upon the Act of the One and thirtieth of King Charles the Second, which is an Invasion of your Prerogative, never before heard of in England.

Your Majesty does not claim an Authority to protect any of your Officers for disobeying a known Law. The *Habeas Corpus* Act, in Times of imminent and visible Danger, was in the late Reign suspended by Acts of Parliament for some short Time, and yet (so sacred was that Law held) that those Acts passed with great Reluctancy, and one of the Arguments that prevail'd most for agreeing to that Temporary Suspension was, That it would be an unanswerable Evidence

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to



to all future Times, that this Act could never be suspended afterwards by any less Authority than that of the whole Legislature: But we live to see a House of Commons take upon them to suspend this Law by a Vote.

They Ordered, That the Lord Keeper of your Great Seal should be acquainted with their Resolutions, to the End the Writs of *Habeas Corpus* may be superseded as contrary to Law, and the Privileges of their House. They are contrary to no Law, but that of these Votes, which surely are none of the Laws the Lord Keeper was sworn to observe. But yet he is to act at his Peril. They have ordered this Law to be published to him by their Clerk.

The Lord Keeper is a Commoner, and if he disobey, 'tis a Breach of Privilege; and if they should carry it so far, as to order him into Custody, he may seek, but is not to have Relief from any *Habeas Corpus*.

We humbly beg Pardon of your Majesty for this long and melancholy Representation, which we could not avoid, without being guilty of Treachery to your Majesty, and to our native Country. The Five Persons immediately concern'd are but poor Men; but we well know your Majesty's Justice and Compassion extends itself to the meanest of your Subjects.

The Matters in Dispute are of the highest Consequence: Your Majesty's Prerogative, the Reverence due to Laws, and the Liberties and Properties of all the People of England are concern'd, and at Stake, if these Encroachments prevail.

We do not pretend to solicit your Majesty to put a Stop to these Innovations, your own Wisdom will suggest the most proper Methods: We have endeavour'd to do our Duty, in laying the whole Matter before you.

We humbly beg Leave so far to resume what has been said, as to present your Majesty a short View of the unhappy Condition of such of your Subjects, as have Right of giving Votes for choosing Members to serve in Parliament, which has been hitherto thought a great and valuable Privilege; but by the late Proceedings of the House of Commons, is likely to be made only a dangerous Snare to them, in case they who may be hereafter chosen to serve in Parliament, shall think fit to pursue the Methods of this present House of Commons.

If they refrain from making Use of their Right in giving their Votes, they are wanting in their Duty to their Country, by not doing their Parts towards the choosing such Representatives as will use their Trust for the Good of the Kingdom, and not for the Oppression of their Fellow Subjects.

If the Officer, who has the Right of taking the Suffrages, refuse to admit them to give their Votes, they must either sit down by it, and submit to be wrongfully and maliciously deprived of their Rights; or if they bring their Actions at Law, in order to assert their Rights, and recover Damages for the Injury (as all other injured Men may do in like Cases) they become liable to indefinite Imprisonment, by incurring the Displeasure of those who are elected.

If, being thus imprison'd, they seek their Liberty by *Habeas Corpus*, (the known Remedy of all other Subjects) they do not only tie their own Chains faster, but bring all their Friends and Agents, their Solicitors and Council, into the same Misfortune with themselves.

If they think themselves to have received Injury by the Judgment upon the *Habeas Corpus*, and seek Relief by Writ of Error, (the known Refuge of those who suffer by any wrong Judgment) all that assist them in that Matter, are likewise to lose their Liberties for it, and they themselves will be removed to new Prisons, in order to avoid the Justice of the Law.

We humbly conclude with acquainting your Majesty, That we have been inform'd, by the Petition of Two of the Prisoners, that they have been long delay'd, (tho' they have made their Applications in due manner for Writs of Error:) We are under a necessary Obligation, for the sake of Justice, and asserting the Judicature of Parliament, to make this humble Address to your Majesty, That no Importunity of the House of Commons, nor any other Consideration whatsoever, may prevail with your Majesty to suffer a Stop to be put to the known Course of Justice, but that you will be pleas'd to give effectual Orders for the immediate issuing of the Writs of Error.

*Die Mercurii 14 Martii, 1704.*

Her Majesty's most Gracious ANSWER to the ADDRESS.

My LORDS,

*I Should have granted the Writ of Error desired in this Address; but finding an absolute Necessity of putting an immediate End to this Session, I am sensible there could have been no further Proceeding upon that Matter.*

Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the humble Thanks of this House be presented to Her Majesty, for Her most Gracious Answer, in which She has express'd so great a Regard to the Judgment of this House, so much Compassion to the Petitioners, and such Tenderness to the Rights of the Subject.

The same Day the Queen came to the House, and put an End to the Session, and the Lord Keeper prorogued the Parliament to Tuesday the First of May, which put an End to this Affair.

The Substance of what was offer'd by the Lords, at the First and Second Conferences with the Commons, being already printed in the Proceedings of the Commons, *ante* Page 141, 142, 143, 144, 145, 146, is the Reason it is not here again inserted.

*Some of the Arguments that were made use of by the Lords in their Debates, and at the free Conference, to maintain their own Resolutions, and answer the Objections of the Commons.*

The House of Commons made two Objections to the Manner in which the Lords proceeded at the first Conference: They said, They had anticipated all Debates, by delivering positive Resolutions, whereas this is the proper and ordinary Method of Proceedings between the Two Houses; When one House has form'd an Opinion, they communicate it to the other, to the End that if it be found reasonable, it may be approved; or, if upon Examination it be disliked, the Causes of the Disagreement may be shewn, in order to convince the other House of their Mistake.

The Second Objection made to the Manner of the Lords Proceedings was, That the Resolutions

ons were grounded upon the Petitions of Criminals, who had fallen under the just Displeasure of the Commons, and upon a printed Paper not regularly before the House of Lords.

As to the first Part of the Objection, the Lords did, (as just Judges always do,) consider the Matter of the Petitions, and not the Persons of the Petitioners. And as to the second Part, the Lords said, The printed Paper mentioned by the Commons, was the Votes of the House of Commons, of the 24th of *February*, signed by the Speaker. If the Commons had disown'd that Paper, there had been some Weight in this Objection, but if they think it regular to print and publish their Votes to the People, the Lords will always think it regular to take Notice, and make Use of those Papers, as they see Occasion; and it seemed strange for the Commons to object to the taking Notice of their Votes, when the only Colour they have hitherto pretended for their first Displeasure at the five Prisoners, was, That they did not take Notice of some Votes of theirs, (which they call their Declaration,) made during their last Session. And the printing their Votes is the only Method they have yet taken, for the Promulgation of the New Laws they take upon them to make.

The Lords had no occasion to say any thing in Defence of their first Resolution, because the Commons did not think fit to avow in Words, That they had a Power to create new Privileges by their Votes, tho' they have manifestly attempted it in Practice, and particularly in the Case of the five Prisoners.

As to the unjust Reflections which the Commons made upon the House of Lords, as if they had entertain'd Original Causes, and were guilty of some Encroachment in hearing Appeals from Courts of Equity;

The Lords avowed their Claim of a Jurisdiction, in hearing and determining Appeals from Courts of Equity, and could shew a continued Exercise of it more ancient than the Determination of Elections in the House of Commons, which yet the Lords do not go about to call in Question; But they deny their having meddled with any Original Causes, or that the Case particularly mentioned by the Commons, was at all of that Nature.

The Lords did not understand what the Commons meant, by saying, The Lords had founded their second Resolution upon an extrajudicial Vote. The Judgment in the Case of *Abby and White*, was given with great Deliberation, and founded upon undeniable Reasons and unquestionable Authorities: And the Lords condescended so far in that Matter, as to direct the State of that Case, and the Grounds of that Judgment, to be drawn up and printed.

2. The second Resolution of the Lords consists of Two Assertions: *First*, That every Man who apprehends himself to be injur'd, has a Right to seek Redress by Action at Law.

*Secondly*, That the prosecuting Actions at the Common Law, against any Person, not entitled to Privilege of Parliament, is no Breach of Privilege.

What the Commons objected to the Universality of the first Part of that Resolution, as if it would destroy all Distinctions of Courts, and make a Confusion of Jurisdictions, did arise only upon a plain Mistake. The Lords mentioned

Actions in General, without confining what they said to Actions at Common Law, or affirming that Actions for all sorts of Injuries, may be brought in any one Court.

As to the Insinuation that the Lords had no other Aim than to extend their own Jurisdiction, by the seeming Regard and Tenderness they shew'd for the Rights and Liberties of the People, The Answer is, The only just Way of interpreting Mens Meaning, is, by observing what they act.

The Lords have acted with true Regard to Liberty and Property on this Occasion, as well as in all others: They have voluntarily own'd themselves to be restrain'd, at the same time they desire the Commons not to go about to create New Privileges: The Lords claim'd nothing new; and the Commons cannot with Reason desire them to give up what the Law and the Constitution have placed in them, the Jurisdiction in the last Resort.

The principal Thing insisted upon by the House of Commons against this Resolution, was, That there are privileged Cases, as well as privileged Persons; but they did not think fit to give any Instances of such privileged Cases, as were any ways applicable to the Matters in Dispute, that is, That were so entirely of the Consuance of the House of Commons, that the bringing an Action at Common Law in those Cases was a Contempt to the House of Commons; and unless that could be done, this Distinction of privileged Cases from privileged Persons, will have no Weight to justify the Commitment of the five *Aylesbury Men*: If Men mistake and bring Actions in *Westminster-Hall*, for Matters cognizable in Parliament, so that they can have no Relief in the Courts below, it does not follow from thence, that they ought to be committed for Breach of Privilege on that Account.

The determining of Elections is admitted to be the Business of the House of Commons, and yet it is certain that the prosecuting Actions at Common Law for false or double Returns, was never thought to be a Contempt to the House of Commons, nor was any Body punished or committed upon that Account, in the Cases of *Sir Samuel Barnardiston* and *Mr. Onslow*.

The Freedom of Speech in Parliament, is the most necessary and the most acknowledged Privilege of the House of Commons: And yet when an Information was brought in the *King's Bench* against *Sir John Elliot* and others, for Words spoken in the House of Commons, and Judgment was given against them in that Court, the Commons did not think it sufficient to condemn that Judgment by Votes of their own House, but brought those Votes up to the Lords, and desired their Concurrence, which was given; and immediately thereupon a Writ of Error was brought in Parliament, and the Judgment regularly reversed there: And it cannot be denied, that upon this Occasion the most valuable Privilege of the House of Commons was brought under the Judgment of the Lords, as well in their Judicial, as in their Legislative Capacity.

The Case of *Richard Strode*, and the Act of Parliament which passed upon that Account, in the fourth Year of King *Henry* the Eighth, was that which was principally insisted on by the



the House of Commons, in the Case of Sir *John Elliot*, for justifying their undoubted Privilege of Freedom of Speech, and shewing the Injustice of what was done in that Case by the Court of *King's-Bench*.

The Case of *Strode* might be used by the Lords as another Instance to shew, That this Distinction of privileged Cases will not serve the Purpose of the House of Commons, to justify the Commitments of the *Aylesbury* Men. He was prosecuted in the Stannary Courts for Words spoken, and Bills offered in the House of Commons, in order to be passed into Laws, and upon that Account was imprisoned and condemned to pay considerable Sums, and petitioned the House of Commons to be relieved in that Matter. The House of Commons did not then pretend to put a Stop to those Suits, or to commit the Persons concern'd in them, but thought the only Remedy against those Prosecutions, and others of like Sort, was to prepare a Bill in order to be passed into a Law, for making void the Judgments against *Strode*; and took that Occasion by the same Bill, to declare the Law in general, and to give an Action to all Persons who should be afterwards vexed or molested for the like Causes, in which they should recover treble Damages, and Costs of Suit.

There is no Case that can more properly be called a privileged Case, with respect to the House of Peers, than the determining of Peerage, and yet if that Matter comes to be incidentally a Point, in any Case depending in the Courts in *Westminster-Hall*, they must proceed to determine of it, as they think the Law to be; And the Lords have not gone about to hinder it, nor found Fault with them upon that Account.

The Courts in *Westminster-Hall* must of Necessity judge of the Privileges of Parliament in many Cases: When any Person prays a Writ of Privilege, (which was always the Way anciently when Men desired the Benefit of Privilege, and it is often practised yet upon Occasion,) the Court where the Writ is prayed must judge, whether the Party has Right to Privilege or not.

Suppose the Serjeant of the House of Commons should kill, or be kill'd, in the Execution of a Warrant of that House, upon an Indictment for Murder, the Court must necessarily judge of the Legality of the Warrant.

The Commons supposed Cases of Affronts to the Person of the Speaker, or of reproachful Words spoken of the whole House of Commons, are Instances of what they called privileged Cases.

There is no Doubt, but either of these Cases would be Contempts, and such as might be punished by the House, but most certainly, these were also such Offences as might be prosecuted in *Westminster-Hall*: And if the Attorney-General should bring Informations upon them, it could never be pretended, that he would be Guilty of a Breach of Privilege of the House of Commons.

It was urged, that in privileged Cases, the Votes of the House of Commons were like Prohibitions to the Ecclesiastical Courts, and that when Prohibitions were served upon the Judges in the Admiralty, or Ecclesiastical Courts, it was a Contempt for them to proceed farther.

The Answer to this is, that Prohibitions to the Ecclesiastical and Admiralty-Courts, were founded upon a particular Reason: The Proceedings in those Courts are according to the Civil, or Canon Law, and therefore it was necessary to preserve the Constitution, and restrain those Courts from making Invasions upon the Common Law, that a Guard should be set upon them, and a Power fix'd to restrain them; and this Power is lodged in the Courts of *Westminster-Hall*, who are trusted with the issuing Writs of Prohibition, to the Ecclesiastical and Admiralty-Courts from Time to Time, upon Complaints made to them: And these Writs of Prohibition, must be served personally upon the Judge of the Admiralty, or the Ecclesiastical Judges, who will be liable to Attachments if they proceed after such Service, until such Time as they have shewn the Nature of the Suit to the Courts from which the Prohibition issued; and if the Suit be properly of Ecclesiastical, or Admiralty-Consuance, the Court must grant a Consultation, whereby they are at Liberty to proceed again. This is a known and settled Method of Legal Proceedings, but the Votes of the House of Commons were never yet resembled to the Queen's Writs: No Court is bound to take Notice of them; on the contrary, the Judges are bound not to take Notice of them, but to act according to the known Law; No Body has Power to prohibit the Courts in *Westminster-Hall*, the Judges there are sworn to proceed to do Justice, notwithstanding any Command under the Great Seal, or Privy Seal, or by any other Authority whatsoever: And the Subjects of *England* have no longer an Inheritance in the Common Law, if the Judges are to take Notice of the Votes of either House of Parliament, and regulate their Judgments accordingly.

The Votes would not always be uniform in either House, and it appears by the present Dispute, that the Two Houses might often differ in Matters of Importance, and the Judges would be under Difficulty which of the Houses to obey: And if they yielded Obedience to both, they would be obliged to act very contradictorily.

3. What was said against the Third Resolution of the Lords, was, First, That thereby the Lords took upon them to judge of the Commons Privileges: To this it was said, That if the House of Commons, under the Name of Privilege, would proceed to do Things inconsistent with the known Prerogatives of the Crown, with the known Privileges of the Lords, contrary to the Laws, or destructive to the Liberties of the People, the Lords were bound to tell them, These were not their Privileges. If by saying, they only are Judges of their own Privileges, they would deprive the Crown and the Lords from taking Notice of manifest Innovations, and objecting to them, as there was occasion, the Commons might take to themselves the whole Government without Controul.

They were challenged to produce Precedents to warrant the Commitments of Men, only for proceeding in Suits at Law against those who had done them Wrong, and had no Pretence of Privilege.

The Lords did not dispute the Power of the Commons, in examining and determining the Elections

Elections of their own Members, nor of enquiring into all Matters relating to the Determination of that Question, particularly their examining into the Qualifications of Electors, and agreed that what they determined would be binding, as to the Right of the Member to sit in the House: But that Determination would not bind the Right of any Elector, for he was no Party to that Dispute of the Election, he was not heard for himself, nor was his Cause in Agitation before the House; and the Action brought by the Elector has no manner of Relation to the Sitting of the Member, but is only for Recovery of Damages upon Account of the particular Injury done him by the Officer at the Election.

Suppose there was a Contest about two Persons, which was Mayor of a Town, the Court where that Cause was tried, in order to a Determination of the Right, must perhaps examine into the Rights of those who voted; but would it be pretended, that the Electors would be bound by the Opinion of the Court in that Case, and that they could not bring their Actions to recover Damages against the Officers who wilfully refused their Votes, however the Question was decided as to the Mayor? So that it was begging the Question to pretend, that because the House of Commons can try the Right of the Member to sit, therefore they only have a Power to decide finally the Rights of the several Electors.

There is no Weight in the Objection, That if these Suits were allowed, the Officers who are obliged to take the Poll, would be exposed to Multiplicity of Actions.

The Law is so in all Cases of Elections of Officers: He who is to take the Poll, is bound to do his Duty at his Peril; if he acts with an honest Intention, tho' he should be guilty of a Mistake, he is in no Danger, for no Jury ought to find him guilty: But if an Officer wilfully and maliciously refuses to admit those who have Right to give their Votes, every one of them may sue him in any proper Court, as they see Cause; and the more he wrongs, the more he ought to suffer. And which would be the greater Mischief, that the Officer who does Injustice should be subject to Actions, or that he should be at Liberty to reject as many rightful Votes as he thinks fit, without being liable to make any Reparation, and which is the Part a House of Commons ought to take? The Lords observed, That the natural Order of Things seemed to be quite inverted in this Dispute; the House of Commons were taking part against the Freedom of Law, against the Liberty of Mens Persons, and against the Right of their Electors.

As to the several Precedents insisted upon, they conclude nothing to the present Question, every one of them relating to the Right the House of Commons claims of determining the Elections or Returns of their Members, which they are in the quiet Possession of; and the general Expressions which are found in the Relation of these Precedents, can be understood only with respect to the Subject-Matter of those Cases.

The first Precedent in the 28th of Queen Elizabeth, is of a double Return for the County of Norfolk. Tho' the Lords do not deny, That such Cases are proper to be determined by the

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House of Commons; yet this Precedent does not go far towards asserting their Right, for in that Case the second Writ was quashed by the Chancellor and Judges before the Determination made by the House of Commons: And in the citing this Precedent they have not rightly stated the Words of the Queen's Message, or of the Resolutions of the House of Commons, as will appear by Sir Simon D'Ewe's Journal; and they could not say they had any original Journal of that Time.

As to the second Precedent they cited, which is the Case of Sir Francis Goodwin, in the first Year of King James the First, which they made use of to prove their own Power of determining Elections, and that they were not to give an Account of their Proceedings therein to the Lords: It appears by their own Journal, That they had not stated that Case fairly; and that in fact the Lords, at the Desire of the Commons themselves, were Mediators between them and the King in that Dispute; and that the Commons at last yielded the Point, and notwithstanding their Determination in favour of him, submitted, That a new Writ should issue for choosing a Member in the place of Sir Francis Goodwin. And tho' there be Mention in the Journal of a Letter wrote by Sir Francis Goodwin, desiring, That this third Writ should issue; yet that could make no Difference in the Case, for it will not be pretended, That a Member could give up the Right of his Electors, and the Judgment of the House.

But all this makes nothing to the Justification of the Commitment of the *Aylesbury Men*.

The Precedent cited in 1672, relates only to the Right of issuing Writs for the Election of Members during the Continuance of the Parliament, the ordering of which was voted to be in the House of Commons only, and is not at all disputed at this time.

The Lords never disputed the Commons Power of committing for Breach of Privilege, as well Persons who are not of the House of Commons, as those who are: The Question is only, Whether a Matter that has no relation to the Sitting of any Member in Parliament, may be made a Breach of Privilege, by being called so in a Vote, or having that Name given to it in a Warrant of Commitment: That is, in other Words, Whether they have Power to create to themselves new Privileges by their Votes; for they will never be able to prove an Usage of committing Men for resorting to Law in such Cases, and it will be hard for them to convince those whom they represent, that this arbitrary oppressing poor Men, is or can be understood to be only an interposing to preserve the Rights and Liberties of the People of England.

4. The Commons did not deny the Lords fourth Resolution; otherwise than by saying, That the Application was to be made to the proper Place, and that where the Commitment is by the House of Commons, there is no Place to apply to for Liberty but that House.

The Lords thought this to be a Position very fatal to Liberty; for it places an arbitrary and absolute Power of Commitment in the House of Commons. Tyranny may be in many as well as in a single Person: The thirty Tyrants of Athens carry that Name with as heavy an Imputation as any single Person.

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The Lords never said, That every Prisoner who brings his *Habeas Corpus* ought to be discharged, or that there are not Cases excepted out of the *Habeas Corpus* Act; what they insist upon is, That a Prisoner brought before a proper Court by *Habeas Corpus*, where it does appear that the Matter he stands committed for is no Crime in Law, ought to be discharged, by whatsoever Authority he was committed, or by whatsoever Name the Fact is called in that Commitment.

Several Precedents were mentioned by the Commons. First, The Case of one *Jones*; but it did not appear who he was, nor what his Case was, nor who would have taken him from the Commons; and therefore there can be no Precedence to draw any Inference from such a Precedent.

The Lords wondered to find any Weight laid on the Votes passed in the Year 1675. It is well known the Kingdom was at that time generally grown weary of that Parliament, which had been continued above thirteen Years; and there was a great Number in both Houses who watched for any Advantage to make their longer Continuance impracticable.

And there happening a Question at that time, Whether there might be a Proceeding in Appeals before the House of Lords, in Cases where Members of the House of Commons were Parties; this was so managed, that in about a Month's time Matters were grown to such a Height between the Two Houses, that all Correspondence was in a manner broken off between them; and they proceeded to make such Votes, and to do such Acts from Day to Day on either side, as they thought would most provoke.

The Commons cited some of these Votes which were passed in their House towards the Height of the Contest, and the Lords might as well have cited other Votes of the House of Lords, in Contradiction to them, which were altogether as high, and are at least of as much Authority as those of the House of Commons: So that it is hard to imagine, what Use there can be of citing such Precedents, which did occasion two Prorogations, one after the other, and must always have as bad Consequences whenever they are followed.

The House of Commons took the same Exception to the Lords fifth Resolution, as they did to the third; That they therein made themselves Judges of the Privileges of the House of Commons: And the Lords contented themselves with giving them the same Answer.

What the House of Commons said in respect to their censuring and punishing the Council, who pleaded at the Queen's-Bench-Bar, upon the Return of the *Habeas Corpus* in behalf of the Prisoners, seemed very remarkable, That it was because they were not so modest as to acquiesce in the Opinion of the Lord-Keeper and the Judges, that the Prisoners were not bailable by the *Habeas Corpus* Act; and they would not have taken Notice of them, but because they would not rest satisfied, but would bring on the Cause again, where the Privileges of the House of Commons were with great Licentiousness of Speech denied and insulted in publick Court, without any Hopes or Prospect of Relief of the Prisoners, but in order to vent new Doctrines against the Commons.

This seemed to be a kind of Excuse for the committing of the Council, but it does in no sort agree with the Votes relating to this Matter, which passed in general Terms, and may be cited for Precedents hereafter, for committing Council (with as good Reason as the Votes in 1675.) when these secret Motives, which induced the House of Commons in this Case, will not appear.

The Vote of the 24th of February ordered the Committee to examine what Persons had been concerned in pleading upon the Writ of *Habeas Corpus*, not what was said by Council in their Pleadings; and the Votes against the several Gentlemen of the 26th of February, are, That by pleading upon the Return of the *Habeas Corpus* on behalf of the Prisoners, they were guilty of breaking the Privileges of the House of Commons. It does not appear that there was any Complaint of what they said, at least there was no Vote against them for their Words; and indeed, if the Charge against them had been for Words supposed to be spoken, it would have been an unaccountable Hardship to have hurried them into Custody, without ever bringing them to the House to hear their Accusation, or to be heard as to what they had to say for themselves.

It does not appear that these Gentlemen were ever heard, or indeed were at all concerned, as to the Writs of *Habeas Corpus*, brought before the Lord-Keeper and the Judges in the Vacation-time: But suppose they had, and suppose they were satisfied, that as the *Habeas Corpus* Act was drawn, these Men might not be so clearly bailable by the Judges in Vacation-time, by virtue of these Writs, which were formed upon that Statute; and yet they might be of Opinion, That the Prisoners had a reasonable Prospect of obtaining Relief upon Writs of *Habeas Corpus* brought at Common Law.

If they thought so, it was not upon slight Grounds, as appeared by the Consequence; for the Lord Chief Justice of the Court of Queen's-Bench, whose Learning and Judgment is well known, and as universally esteemed as his Integrity, was clearly of Opinion, That they were entitled to the Relief they prayed for their Clients.

The Commons may give what hard Words they please to these Gentlemen appearing to plead in behalf of the Prisoners upon the Writs of *Habeas Corpus*; they may call it Inveteracy shewn to the Commons, and a conspiring to make a Difference between the Two Houses, and to disturb the Peace of the Kingdom: But after all that can be said, the Fact will only be, That four Gentlemen, Lawyers by Profession, retained in a Case of Liberty upon a *Habeas Corpus* brought by five poor Prisoners, did their Duty in their Profession; and for doing so, were themselves imprisoned by the House of Commons; and denied the Benefit of the *Habeas Corpus* Act: And this the House of Commons called, *Doing Right to their Body*.

No Lawyer has suffered for serving his Client even against the Crown: If the learned in that Profession may safely open the Laws when the Prerogatives of the Crown are in question, it will seem very hard they should be punished for doing it in a Case of Privilege. To deprive Men under Restraint of the Assistance of their Friends,

exceeds

exceeds the Severity of any Court but that of the *Inquisition*, the very Name of which ought to strike all *Englishmen* and Protestants with Horror.

The last Resolution of the Lords was not contradicted by the House of Commons; and therefore the Lords took it for granted; that as it was no longer contested, but that a Writ of Error is a Writ of Right, and not of Grace; consequently, that the Commons did no longer insist upon that Part of their Address, That the

Queen would not give Leave for a Writ of Error.

As to what was said by the Commons; That it was not material whether Writs of Error were of Grace or not, because they did not lie in the Case of the Petitioners: The Lords said, That whether the Writs of Error could be maintained or not in point of Law; was not of the Consequence of the House of Commons, nor the Matter in Dispute between the Two Houses.

## LII. The Proceedings in the House of Peers and House of Commons, on the Case of CHARLES BATHURST, Esq; (mentioned in the foregoing Proceedings) in January, 1703.

Jovis 20 die Januarii, 1703.

**A** PETITION of Charles Bathurst, Esq; was presented to the House of Commons, and read, touching an Order made by the House of Peers, the Twelfth of February, 1702, with relation to an Order made by the Court of *Exchequer*, the Fifteenth of July, *Decimo Tertio Regni Regis Gulielmi Tertii*, concerning an Inquisition and Survey of the Boundaries of the Honour of *Richmond*, and Lordship of *Middleham*, and of many other Honours, Manors, and Lordships, bounding thereupon; and praying the Consideration of the House thereof; and such Relief on the Subject-Matter of the said Petition, as shall be thought fit.

Ordered, That some Members be appointed to search the Journals of the House of Peers, as to their Proceedings touching the Matter aforesaid, and also the Offices of the Court of *Exchequer*, touching the Proceedings there, in relation to the said Inquisition, and report the same to the House.

And several Members were appointed accordingly.

The CASE of CHARLES BATHURST, Esq; Petitioner. To the Honourable the Knights, Citizens, and Burgesses, in Parliament assembled, in order to his Relief against certain Proceedings in the House of Peers, at the Instance of the Right Hon. THOMAS Lord WHARTON, Appellant, from an Order of the Court of *Exchequer*; bearing Date the 15th Day of July, 1701, against ROBERT SQUIRE, Esq; Respondent.

July 15, 1701.

**T**HE Court of *Exchequer* made an Order *ex officio* for the Preservation of a Record of that Court.

Nov. 9, 1702. The Lord Wharton finding that the said Record was made use of as Evidence against him in a Trial at the *Queen's-Bench Bar*, of an Issue directed out of *Chancery*, wherein the said Lord Wharton was Plaintiff, and the said Petitioner Mr. Bathurst, the said Mr. Squire, and others, were Defendants, concerning some

Lead-Mines, did, on the 19th of December, 1702, petition the House of Lords (by way of Appeal) from the said Order of the Court of *Exchequer*, and prayed to have that Order discharged, and the Record taken off the File.

In which Petition the Lord Wharton complained, That the said Record was imposed on the Court (by Contrivance between the said Mr. Squire and Mr. Thomson, a sworn Clerk in the Court of *Exchequer*) and therefore prayed, they the said Mr. Squire and Mr. Thomson might answer the said Petition (which he called an Appeal) and accordingly they were ordered to answer the same.

Jan. 7, 1702. Mr. Squire and Mr. Thomson petitioned the House of Lords, setting forth, That no Suit was ever depending in the Court of *Exchequer* between the Lord Wharton, and the said Mr. Squire and Mr. Thomson; and that therefore the Lord Wharton's said Petition was not an Appeal, but an original Complaint against them for a Crime of a high Nature, for which they ought to be left to be tried by the usual Course of the Laws of the Land; and prayed their Lordships to dismiss the Lord Wharton's Petition; and to discharge their Order, by which they the said Mr. Squire and Mr. Thomson were obliged to answer the same.

Jan. 21, 1702. The Lord Wharton put in his Answer to their Petition, insisting on his Appeal as regular, and alledging that there was a Suit in *Chancery*, wherein the said Mr. Squire was a Defendant (among others) concerning the Lead-Mines in Question, and that the Order made in this Case (tho' in the Court of *Exchequer*) affected the Suit in *Chancery*; and he then obtained an Order to hear one Council on each Side the very next Day.

Jan. 22, 1702. Council were heard, and their Lordships were pleased (on Debate) to dismiss the Petition of the said Mr. Squire and Mr. Thomson, and to order them to answer the Lord Wharton's Petition (or Appeal) on Monday then next following. Against which Proceedings several of the Lords entered their Dissent (or Protest) and gave Reasons for their so doing in the Words following; viz.

First,



First, " We conceive that by this we assume  
" a Jurisdiction in an original Cause for these  
" Reasons:

1st, " Because there has been no Suit between  
" the Parties in the *Exchequer*; and confe-  
" quently this Petition cannot be called an  
" Appeal from that Court.

2dly, " Altho' there was a Suit in the Court  
" of *Chancery*, yet one of the Persons re-  
" quired to answer was not a Party in that  
" Suit; and therefore as to him (at least)  
" it must be an original Cause.

3dly, " Tho' all had been Parties in the *Chan-*  
" *cery*, yet it never was heard that an Ap-  
" peal lay from one Court that had no  
" Suit depending in it, because there was  
" a Suit depending in another Court.

Secondly, " Because no Court can take any  
" Cognizance of a Cause in which that Court  
" cannot make an Order; but in this Case the  
" House of Lords cannot make an Order (be-  
" cause very many are concerned in this Re-  
" cord who are not before this House) there-  
" fore this House cannot take any Cognizance  
" of it.

Jan. 25, 1702. The Lord *Wharton* acquainted the House, That he was willing to leave out *Thomson*, and did only expect *Squire* should answer his Petition, and thereupon he obtained an Order to that Purpose.

Feb. 2, 1702. Mr. *Squire* put in his Answer, still insisting, as he had done in his said Petition, That it was an Original Complaint against him, and could not be called an Appeal, there being no Suit depending in the Court of *Exchequer* between the Lord *Wharton* and him, and that the Record, \* (which the Lord *Wharton* would have suppressed) not only greatly concerned Her Majesty, but the Inheritances of several Thousands of Persons, who are equally concerned, (if not more than he) in the Preservation thereof, and that it was more immediately incumbent on the Barons of the Court of *Exchequer*, to justify their own Order; and therefore prayed their Lordships would not proceed further against him, 'till all Parties concerned might be duly heard.

Feb. 8, 1702. The City of *London*, who are Grantees from the Crown of the whole Honour of *Richmond*, and Lordship of *Middlebam*, finding themselves interested in the Preservation of the said Record, petitioned the Lords to be heard by their Council against the Petition of the Lord *Wharton*, and their Lordships accordingly order'd Council to be heard for the City, on the Twelfth of *February*, being the same Day that the Council for the said Mr. *Squire* were to be heard.

Feb. 12, 1702. Their Lordships heard Council for the Lord *Wharton* and Mr. *Squire*, (but refused to hear Council for the City, notwithstanding their said Order) and thereupon were pleased to order a Trial at Bar in the Court of *Common Pleas*, the next *Easter Term*, by a Jury of *Middlesex*, wherein this was to be the feigned Issue, viz.

" Whether the Skins of Parchment, direct-  
" ed by Order of the Court of *Exche-*  
" *quer*, of the Fifteenth of *July*, 1701,  
" to be filed, are the perfect, unaltered,  
" exact, and entire Commission and Re-  
" turn first filed in the Court of *Exche-*  
" *quer*, in the Sixteenth Year of King  
" *James the First* : "

And Ordered, That in the said Action the said *Robert Squire* should be Plaintiff, and take the Proof of the said Issue upon himself, and the said Lord *Wharton*, Defendant, and that the Skins of Parchment, or any Copy thereof, should not be given in Evidence in any Court whatsoever, until the said Trial was over; and that the said Skins of Parchment (being upon the File by Virtue of the said Order of the Fifteenth of *July*) should not be allowed as any Evidence on the said Trial for the Plaintiff, and that, after the said Trial, the Verdict given therein should be certify'd and returned by the Court of *Common Pleas* into the House of Peers.

Mr. *Squire* did not decline the Trial of the Issue above directed, as being conscious of any ill Practices by himself, or any others, or for that he was not able to produce sufficient Evidence to prove that the said Record is perfect, unaltered, exact and entire, as first filed in the Court of *Exchequer*, in the Sixteenth Year of King *James the First*, (tho' Mr. *Squire* could not but think that it was a great Hardship to make him Plaintiff in the said Action, to put the Validity of the whole Record upon the said Issue, and to oblige him to take the Proof thereof upon himself, and all this without his Consent, or the Consent of others, who are more immediately concerned in the Preservation of the said Record) there being better Proofs, in order to find the said Issue truly in the Affirmative, to be given for the said Record, than for any one of the most Authentick Records in any of the Courts of *Westminster*, (as is verily believed.) For,

I. In a Decree of the Court of *Exchequer* inrolled, made in the Nineteenth Year of King *James the First*, the said Record is recited and referred to, as then on Record in the Court of *Exchequer*.

II. The said Record is entered and inrolled *Verbatim*, in the Book of Inrolments of Surveys, &c. kept in a publick Office at *Westminster*, belonging to the Auditor for *Yorkshire*, and the said Entry is near as old as the said Record.

III. The said Record, and particularly the Boundaries of the Honour of *Richmond*, and Lordship of *Middlebam*, (about which only the Disputes are between the Lord *Wharton*, and the said Mr. *Batburst*, and the other Defendants) are fairly entered, and remain on Record, in an old Book, kept amongst the Records of the City of *London*, and the same Entry there appears to be made in the Year 1628.

IV. Divers ancient Office Copies (and other Copies) of the said Record, and particularly of the Boundaries of the said Honour of *Richmond*, and Lordship of *Middlebam*, have been taken, and the same were examined with the said Record, when on its proper File in the Court of *Exche-*

\* Note.—The Record is a Survey and Boundary of the Honour of *Richmond*, and Lordship of *Middlebam*, which together are larger than the County of *Middlesex*, and more than One Hundred Miles in Circumference, whereas the Boundaries contested by the Lord *Wharton* and Mr. *Batburst*, are not above Two or Three Miles thereof.

quer, and certified to be true Copies. All which said Entries and Copies do exactly agree with the said Record, now on its proper File. And moreover, there are many other Instances, Evidences, and Proofs of the Truth, Validity, and Entireness of the said Record.

But Mr. Squire being apprehensive that the House of Peers, in making the said Order of the Twelfth of February, 1702, had assumed a Jurisdiction in an Original Cause, could not (as he believed) comply with that Order, without doing Injury to the Rights and Privileges of the Commons of England; and, for that Reason, did not think fit to try the Issue as directed.

Nov. 9, 1702. Note, That at the first Trial at the Queen's-Bench Bar of the Issue directed out of Chancery, (when the said Record was given in Evidence) the Verdict, upon full Evidence, was given and found for the said Mr. Bathurst, Mr. Squire, and the other Defendants; yet the Court of Chancery, (as is usual where a Right of Inheritance is to be bound) afterwards directed a second Trial to the same End as the former, which came on at the Queen's-Bench Bar, in Michaelmas Term last, Nov. 23, 1703.

That at the last-mention'd Trial, the Council for the Plaintiff, the Lord Wharton, insisted that the said Mr. Bathurst, and the other Defendants, could not give in Evidence the said Inquisition and Survey, (tho' on Record in the Court of Exchequer) nor any Copy thereof, by reason the said Mr. Squire had not tried the Issue directed by the House of Peers, the said Twelfth of February, 1702.

That by Reason of the Premises the said Mr. Bathurst, and the other Defendants, were deprived of that so necessary a Part of their Evidence, for the Support of their Title to the Matters in Question at the said last-mention'd Trial, and so (and for that Reason alone) lost their Cause, which otherwise they could not have done; for that the said Record (back'd with the concurring Testimonies of so many ancient and credible Witnesses, produced on the said Defendant's Behalf) must necessarily have convinced the Jury (as some of them have since own'd and declared) that the Boundaries of the Manours of Helangb in Swaledale, and of Arklegarthdale, are as the said Record mentions them to be, and consequently, the Issue and Verdict must have been found for the said Mr. Bathurst, and the other Defendants.

Sabbati 22 die Januarii, 1703.

Mr. Ward reported, That the Members appointed to search the Journals of the House of Peers, and Offices of the Court of Exchequer, as to their Proceedings touching the Matters mention'd in the Petition of Charles Bathurst, Esq; presented to the House on Thursday last, had searched the Journals and Offices accordingly, and he read in his Place what they found therein, and afterwards deliver'd the same in at the Table, where the same was read.

Order'd, That the Consideration of the said Report be referr'd to the Committee of the whole House, to whom the Consideration of the Report made Yesterday, relating to the Case of Ashby and White, is referr'd.

Order'd, That the same Members do search the Offices of the Court of Chancery, for the Bills and Answers, and Order on Hearing, made in the said Court, between the Lord Wharton, and

the said Mr. Bathurst, and others, and report the same to this House.

Martis 25 die Januarii, 1703.

Mr. Benson reported, That the Members appointed to search the Offices of the Court of Chancery, for the Bills and Answers, and Order on Hearing, made in the said Court, between the Lord Wharton and Mr. Bathurst, had search'd the same accordingly, and had Copies of the Bills and Answers, and Order on Hearing; which he presented to the House, and the Titles thereof were read: And also touching their Lordships Proceedings in the Matter mention'd in the Petition of Mr. Bathurst, in which Case it was alledged, their Lordships had taken upon them an Original Jurisdiction, in controlling an Order made by the Court of Exchequer, for the filing of a Record, that had been several Years in Mr. Grange's Chamber in the Temple.

Ordered, That the Consideration of the said Copies be referr'd to the Committee of the whole House, to whom the Report, with relation to the Petition of the said Mr. Bathurst, is referr'd.

Jovis 27 die Januarii, 1703.

The Order of the Day being read, for the House to resolve itself into a Committee of the whole House, to consider further of the Report of the Journal of the House of Lords, and also of the Petition of Charles Bathurst, Esq; referr'd to the Committee:

Ordered,

That the Serjeant do go with his Mace in Westminster-Hall, and Courts there, and Court of Requests, and Places adjacent, and summons the Members there to attend the Service of the House.

And he went accordingly, and being returned,

The House (according to Order,) resolv'd itself into the said Committee of the whole House, and after some Time spent therein, Mr. Speaker resum'd the Chair, and Mr. Freeman reported from the said Committee, That they had come to some Resolutions, which they had directed him to report, when the House will please to receive the same.

Ordered,

That the Report be made to Morrow Morning.

Veneris 28 die Januarii, 1703.

Mr. Freeman, (according to Order,) reported from the Committee of the whole House, to whom it was referred to consider of the Report of the Journal of the House of Lords, and the Petition of Charles Bathurst, Esq; the Resolutions which they had directed him to report to the House, which he read in his Place, and afterwards delivered in at the Table, where the same were read, and (with some Amendments to the first of them,) agreed unto by the House, and are as follow.

Resolved,

That the House of Lords taking Cognizance of, and Proceeding upon the Petition of Thomas Lord Wharton, complaining of an Order of the Court of Exchequer, bearing Date the fifteenth Day of July, One thousand seven hundred and one, for filing the Record of a Survey of the Honour of Richmond, and Lordship of Middleham, in the County of York, is without Precedent, and unwarrantable, and tends to the subverting the Rights and Properties of all the



Commons of *England*, to an illegal and arbitrary Power.

*Resolved,*

That it is the undoubted Right of all the Subjects of *England*, to make such Use of the said Record as they might by Law have done before the said Proceedings of the House of Lords.

After this, The House of Lords took into Consideration, the Proceedings of the House of Commons, and made the following Resolution.

*Die Lunæ 27 Martii, 1704.*

It is Resolved and Declared by the Lords

Spiritual and Temporal in Parliament Assembled, That the House of Commons taking upon them by their Votes to condemn a Judgment of the House of Lords, given in a Cause depending before this House in the last Session of Parliament, upon the Petition of *Thomas Lord Wharton*, and to declare what the Law is in Contradiction to the Proceedings of the House of Lords, is without Precedent, unwarrantable, and an Usurpation of a Judicature, to which they have no Sort of Pretence.

*Matth. Johnson,*  
Cler' Parliamentor

\* *Die Lunæ 27 Martii, 1704.* It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Resolution and Declaration made this Day, with Respect to the Votes of the House of Commons, in Relation to the Judgment of this House, given upon the Petition of *Thomas Lord Wharton*, the last Session of Parliament, shall be forthwith Printed and Published.

*Matth. Johnson, Cler' Parliamentor*

LIII. *The Trial of Nathaniel Denew, Gent. John Merriam, Gent. and Richard Britton, Gent. at the Queen's-Bench Bar, for an Assault and Conspiracy, with an Intent to Wound, and Beat, &c. William Colepeper, Esq; before the Lord Chief Justice Holt, Feb. 14, 1703-4.*

[Published (from the Trial taken in Short-Hand,) by Mr. Colepeper.]

The QUEEN Plaintiff,

AGAINST

DENEW, and others, Defendants.

Tried at the Queen's-Bench, before the Lord Chief Justice Holt, Feb. 14, 1703-4.

AFTER Proclamation made for Silence, the Jury was Sworn, whose Names are as follow.

*Richard Bealing,*  
*Thomas Dodd,*  
*John Mills,*  
*Robert Rogers,*  
*John Norton,*  
*John Wiseman,*

*Richard Davison,*  
*Simon Smith,*  
*Edward Bennet,*  
*Andrew Cook,*  
*John Henly,*  
*John Cleave.*

Proclamation was made for all concerned in the Trial to appear.

Then the Record was read as follows:

Midd' ff. **T**HE Jurors for our Sovereign Lady the Queen present, that Nathaniel Denew, late of the Parish of St. Clements Danes, in the County aforesaid, Gent. John Merriam, late of that Parish, in the said County, Gent. and Richard Britton, late of the same Parish, in the same County, Gent. being Fighters, Swordsmen,

and Disturbers of the Peace, and skilful and versed in fighting Duels, on the 21<sup>st</sup> Day of August, in the second Year of the Reign of our Sovereign Lady Anne, by the Grace of God, of England, Scotland, France, and Ireland, Queen, Defender of the Faith, &c. did in the Parish of Clements Danes, in the said County of Midd', unlawfully, clandestinely, devilishly, wickedly, and maliciously, under Pretence of Discord, Strife, and Contention between Sir George Rook, Knt. † One of Her Majesty's most Honourable Privy-Council, and William Colepeper, Esq; then and before mov'd, bad, and being, consult, machinate, propose and intend, and did among themselves, and others to the Jurors unknown, confederate and conspire, and each of them did machinate, propose, and intend to beat, wound, and evilly treat the said William Colepeper, and him the said William Colepeper, either by Duel or Assassination, feloniously and maliciously to kill and murder: And that afterwards, that is to say, on the 21<sup>st</sup> of August, in the Year aforesaid, about the Hour of Ten in the Forenoon of the same Day, in the Parish and County aforesaid, the said William Colepeper being in the Peace of God and the Queen, came the said Nathaniel Denew, with Force and Arms, and lying in wait of his Malice, Fore-thought, and Assault premeditated, then and there offered himself to fight a mortal Duel, in Behalf (as he said,) of the said Sir George Rook, against the said William Colepeper; and

† When Mr. Colepeper stood for Knight of the Shire for Kent, Sir George Rook vigorously oppos'd him, and wrote Letters to some of the Freeholders of that County, importing, "That he hoped they would not give their Votes for a Man who had carried up a Petition, (Mr. Colepeper being one of the Kentish Petitioners,) that had been deem'd scandalous, insolent, and seditious, by an English Parliament." This was the first Occasion of the Quarrel between them.

with threatening, spiteful, and opprobrious Words, then and there daringly, wickedly, maliciously, and vehemently urg'd, provok'd, and stirr'd up the said William Colepeper to fight with him the said mortal Duel; and that afterwards, that is to say, on the 22d Day of the said Month of August, in the Year aforesaid, about Nine a Clock in the Morning, in the Parish aforesaid, the said William Colepeper being in the Peace of God and the Queen, then came the said Richard Britton, with Force and Arms, Malice, Fore-thought, and Assault premeditated; and then and there offer'd himself to fight a mortal Duel, in Behalf (as he said,) of the said Sir George Rook; and with threatening Words, daringly, wickedly, maliciously, and vehemently urg'd, provok'd, and stirr'd up the said William Colepeper to fight with him the said mortal Duel; and that the said Nathaniel Denew, and John Merriam, on the same 22d of August, in the Year, and in the Parish aforesaid, with Force and Arms, with Malice, Fore-thought, by lying in Wait, and premeditated Murder, assaulted him the said William Colepeper; and with drawn Swords, sharply, cruelly, and with all their Strength, tryed, and long contended, to wound, kill, and murder him: And unless the said William had strenuously and with Courage defended himself, and had been seasonably rescued by several of Her Majesty's Subjects, at that Time interposing between them, they, the said Nathaniel Denew, and John Merriam, had then and there feloniously, voluntarily, and maliciously kill'd and murder'd him; and that the said Nathaniel Denew, John Merriam, and Robert Britton, committed other Enormities to the said William Colepeper, to the grievous Damage of the said William Colepeper, the Danger of Bloodshed and Murder, to the great Scandal and Infamy of the said Sir George Rook, being One of Her Majesty's most Honourable Privy Council aforesaid, in Contempt of the Queen and her Laws, to the evil Example of all others in the like Case offending, and against the Peace of the said Queen, Her Crown and Dignity.

After which, Mr. Serjeant Darnell began, and open'd for the Queen.

*Serj. Darnell.* If your Lordship please, I am Council in this Cause for the Queen, and, my Lord, it is an Indictment that is brought against the Defendants; it is for a very great Insolence and Assault, in setting upon Mr. Colepeper, and designing to take away his Life; and truly, my Lord, it is a very extravagant Trespas as I have met with. The Gentlemen pretend to shelter their ill Designs against Mr. Colepeper, under the Name of a very great and worthy Person, Sir George Rook; they pretended they came upon his Account to quarrel with Mr. Colepeper, truly for him they would quarrel with Mr. Colepeper. My Lord, Mr. Colepeper told them, that if Sir George Rook had taken any thing ill of him, he knew he was a Gentleman of Quality and Worth, and would acquaint him with it himself, or he would speak with Sir George Rook about it. The Gentleman that came to him, was a kind of Master of Defence, and upon all Occasions hath his Sword ready at any Man's Service; one would wonder at his coming so roughly upon a groundless Mistake, for he had nothing against Mr. Colepeper; and, my Lord,

the Gentleman with some surly Language left him; and my Client was jealous truly what might be the Event of this kind of Proceeding. Tho' Mr. Colepeper is known to be a Man that will not be afraid of any Man of Honour whatsoever; and that they have had sufficient Experience of upon Occasion. My Lord, upon that, Mr. Colepeper thought it proper however to enquire a little into this Matter, and went to wait upon Sir George Rook, and know if there was any thing real in it, that he had Occasion to take ill from him; but he could not imagine any thing, but the groundless Pretence these Gentlemen had. One of them told him at Windsor, Mr. Colepeper ask'd how Sir George Rook did, or where he was? A Question which any Man might ask without any Offence certainly in the World; this they did pretend to alledge against him; the Manner of the Question, that was the Thing was taken Notice of, as if a Man should say, How does such a Man do? And he could not speak this without an Affront, it is very extraordinary indeed! But Mr. Colepeper had great Reason to believe there was a Design upon him; and he found, that there were two or three Persons that are Gentlemen, that do make use of their Swords upon Occasion; and they are now Defendants in this Cause; and, my Lord, Mr. Colepeper finding himself beset very plainly, and having Notice by several Letters from his Relations, that there were several People, that were this Gentleman's Acquaintance, that were hunting after him, he began then to look about him, as every prudent Man would do; every prudent Man, though never so brave, will take Care not to be murdered; and, my Lord, upon this he did, I think, walking along the Street, meet with this same Mr. Denew, who began to be rough with him: Mr. Denew, says Mr. Colepeper, you know you are a Man that is known to be skilful at your Weapons, and if you are resolv'd to fight, pray lay aside your Cane, says he, and if you will run me through, as you talk, pray lay aside your Cane. No, says he, and takes his Cane, and was going to strike Mr. Colepeper; with that Mr. Colepeper thought it time to draw, and Mr. Denew he drew, and they had about half a Score PASSES at one another; and this Gentleman of Defence had not at least more Skill, or more Courage than Mr. Colepeper, but he thought fit to throw down his Sword, and rub off in the Crowd; and Mr. Merriam was with him; and for an honourable Retreat, says he, Mr. Colepeper must have a Care how he manages his Tongue, how he talks; this he would pretend to the Mob as a Reason of his setting upon Mr. Colepeper. My Lord, we shall shew to your Lordship, at several times these Persons have design'd and endeavour'd to set upon Mr. Colepeper, they have pretended to challenge him upon their own Account; at first it was upon the Account of Sir George Rook, as they pretended; then, my Lord, they came to him again: I have spoken, says Mr. Colepeper, to Sir George Rook, and you have nothing to do to meddle in this Matter. How? says Denew, the Affront is to me: To you? says Mr. Colepeper. How's that? Why you talk'd, says he, too loud for me. This Man of Courage, if a Man does not talk to please him, he is angry at the Talk, and will fight him, and Merriam was upon the same Terms; and if Sir George Rook



was satisfied, yet however they must have Satisfaction; and there were twenty more of them that were Friends and Dependents upon Sir George Rook, that had that Esteem of him, that they would make him know himself; and he must fight them all, or be insulted. My Lord, this has been the Behaviour of these Men, and my Client is forced to make this Matter publick, and hath made a Prosecution against them; and no Man as stout as Hercules will suffer himself to be murdered, or set upon by twenty Men. My Lord, we will make out this to be our Case, and doubt not but the Gentlemen of the Jury will do us Right.

*Mr. Colepeper sworn.*

*Coun. for Queen.* Pray, Sir, will you give my Lord and the Jury an Account of this whole Matter, and of these Gentlemen the Defendants, Mr. Denew, Merriam, and Britton?

*Mr. Colepeper.* My Lord, upon the 11th of July last, I think it was, I was attending at Windsor, having Business before the Queen and her Council, there was a Gentleman, who I understand is since gone to America, one Colonel Seymour: I having Business there, and there being an Express come from the Fleet, I inoffensively asked where Sir George Rook was, and how he did? he could not tell; but, says he, here was Sir Jacob Banks just now, he could give me a particular Account: No, I told him, I asked on a publick Account, and I was not desirous particularly to know; so away I went. About an Hour afterwards, coming back to the same Place again, Sir Jacob Banks comes behind me, and pulls me round about by the Sleeve.

*L. C. Justice.* When was this?

*Mr. Colep.* This was in the Beginning of July.

*L. C. J.* Who did so?

*Mr. Colep.* Sir Jacob Banks, my Lord.

*Coun. for Queen.* Begin with Mr. Denew.

*Mr. Colep.* If you please, my Lord, to let me, I'll deal fairly with the Court and Jury, and rip the whole Matter up.

*L. C. J.* Go on, if you please, Sir; what said Sir Jacob Banks?

*Mr. Colep.* Says he, I must speak with you. I dispatched my Business with the Door-keeper, and went to him, and asked his Business with me. Says he, What do you say of Sir George Rook? Said I to him again, Nothing at all. Says he, You have been talking of Sir George Rook's being at the Bath, and drew his Finger cross my Nose; I drew my Finger cross his Nose, in the same manner, and he struck me with his Cane. I applied myself in a few Days after to the Duke of Devonshire, who is Lord Steward of the Queen's Household: He gave an Account of it to the Queen; and I was told the Queen had ordered a Prosecution against Sir Jacob Banks for this Offence.\* After this, on the 21st Day of August, near Temple-Bar, Mr. Denew and Mr. Merriam came to me in the Toy-Shop by the Temple.

*Coun. for Queen.* Consider about what Time of the Day was this?

*Mr. Colep.* About 9 or 10 o'Clock.

*Coun.* What Day?

*Mr. Colep.* The 21st of August. Mr. Denew comes close up to me, and whispers me; says he, I desire to speak with you. I was going with Mr. Denew

into the Inner-Temple Lane; and as I went out of the Shop, Mr. Merriam gave me a wishful Look, and says nothing, but goes his way into the Rainbow Coffee-house. Says Mr. Denew, I have a Message for you from Sir George Rook. Pray, Sir, said I, what is it? Sir George Rook, says he, is informed that you take a Freedom with his Name, and demands of you a Gentleman-like Satisfaction. Pray, Sir, said I, who are you? for tho' he is my Countryman, and I had seen him, I did not recollect who he was: Says he, My Name is Denew. I then recollected his Person and Character. Said I, Mr. Denew, my Circumstances are very particular; I shall wait upon Sir George Rook: I have been advised to question him; but private Revenge is not much my Principle; and I think I have the Advantage of Sir George Rook in the Fighting Part. Says Mr. Denew, Sir George has Friends, and there will be a Way found out for that. I from thence immediately imagined (and by the several Letters my Mother sent to me out of the Country, of Mr. Knatchbull's, Sir George Rook's Friend, coming often, and sending to enquire after me) that I was beset. My Lord, I desired Mr. Denew to call at 11. Sir, said I, if you please to come to me at 11 of the Clock to my Chamber in the Temple, I will then give you a farther Answer. At 11 o'Clock Mr. Denew came; it struck 11 just as he came up Stairs: He then told me, I had disappointed Sir George Rook, and gave me several Reflections, which I passed over, apprehending his Design. Mr. Denew insisted that I should go down presently to Sir George Rook: I said I would wait upon him at 5 o'Clock, and did not doubt but I should satisfy him, for I had not injured him: But Mr. Denew was not satisfied with that Answer, and would quarrel with me if I would not engage to go at 1 o'Clock: So I did; but it was on condition that Mr. Denew should not be there. Said I, Mr. Denew, my Business is with Sir George Rook, and my Friends are out of Town; my Business is with Sir George Rook only, and not with you: So he agreed not to be there; but afterwards at parting, said he unawares, Pray don't disappoint us. Now Mr. Denew having before told me there would be a Way found out for that, and that Sir George Rook had Friends, and I thinking on my Mother's Letters out of the Country, concluded that I should not have fair Play; for these Reasons, instead of going to Sir George Rook, I wrote a civil Letter to him, of which I have a Copy in my Pocket, the Substance of which was, That I had never injured him at Windsor, and that I would wait upon him at 5 o'Clock: And I ordered my Man, Be sure, said I, do you take Notice whether Mr. Denew be there, and what other Gentlemen are there; because, as I said before, I did apprehend myself to be beset, my Lord. My Man goes with this Letter, and brings me Word that he had seen Sir George Rook, that he had delivered the Letter, and that he had sent Word, That if I did not come to him by 5 o'Clock, he would immediately send after me: At the same time my Man said he saw Mr. Denew there, and some others. My Lord, seeing I was used in this manner, I endeavoured to seek for Friends to go down, because I was loth to go naked to Sir George Rook's. To this purpose I went about,

\* Sir Jacob Banks was indicted for this at the Quarter-Sessions in Berkshire. See *Modern Cases argued and adjudged in the Court of Queen's-Bench, in the 2d and 3d Years of Queen Anne*, Page 245, where the Case is at large reported.

to the *Smyrna* Coffee-House in the *Pall-Mall*, and to *Tom's* Coffee-House in *Covent-Garden*. There my Sister *Steed* sent me Word by this very Servant, that Mr. *Denew* was come back to my Lodgings: I took that Occasion to go to Sir *George Rook's* House; the Time appointed was 5 o'Clock, and it was but a little turned of that Time when I went. I asked, Whether Sir *George Rook* was within? The Servant answered me, No; but in such a manner that I thought he was within: Said I, Sir *George Rook* is within; says he, He is either within, or hard by: Said I, Tell him that I am here. The Servant went immediately from me, and in my Eye he went to no House, I kept my Eye upon him, I think he spoke to no Creature; but he returned, and said, Sir *George Rook* was not at home. This farther convinced me, and I ordered my Man to look for him; said I, Look in that Room for Sir *George Rook*; he did so, and he was not there; then I ordered him to look up Stairs.

L. C. J. Where was this?

Mr. *Colep*. My Lord, in Sir *George Rook's* House. After I saw he was not to be found there, I took my Coach and went to St. *James's*; I discharged my Coach, and went cross the Park, and from thence, by Water, to my Lodgings; and when I came in, my Sister told me, Mr. *Britton* had been to see for me.

L. C. J. Did you not see Sir *George Rook* at that time?

Mr. *Colep*. No, my Lord.

L. C. J. Did you see Mr. *Denew* there?

Mr. *Colep*. No, my Lord; for Mr. *Denew* was gone to my Lodgings the mean time, and I took that time to go to Sir *George Rook's*: My Business was to miss Mr. *Denew*, and to speak with Sir *George Rook*.

L. C. J. What Time of the Day?

Mr. *Colep*. At 5 o'Clock, my Lord, the Time appointed, or a little after. My Lord, my Sister told me when I came home, that Mr. *Britton* had been there to enquire for me, and Mr. *Denew* too, and ordered her to send for him to a Coffee-House; so accordingly she sent, and he was gone. About 10 o'Clock at Night in came Mr. *Denew* again: Sir, says he, I desire to speak with you: Sir, said I, I have no Business with you; I shall receive no more Messages from Sir *George Rook* by you, nor send any more Messages to Sir *George Rook* by you. I said farther, I had been at Sir *George Rook's* House, and I believed he was denied; but, said I, I will be there again to-morrow: But, says Mr. *Denew*, we will end it our selves below: I have a Friend, says he, below, and I see you have a Friend with you, and we will end it. My Lord, this was at about 10 o'Clock at Night.

L. C. J. Who was with you?

Mr. *Colep*. My Sister *Steed*, one Mr. *Cumin*, and Mrs. *Harlackenden*. Mr. *Denew*, said I, my Business is not with you, but with Sir *George Rook*: Says he, That shall not serve your turn: Says I, I hear you: Sir, says he, By God, I will have you out: Said I, I hear you: By God, says he, I will have you, if you are to be had above Ground. He then went away that time. The next Day, being *Sunday*, I was dressed almost as soon as it was Light, and about 6 in the Morning I was at Sir *George Rook's* House. I staid near an Hour; about 7 he came down to me: I went into his Clofet with him: Sir

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*George Rook* took Notice of this Challenge he had sent by Mr. *Denew*, and renewed it himself. Said I, Are you resolved to fight with me, right or wrong? He said he was satisfied in the Wrong that was done him, and several others had injured him by making Reflections on him; but he would see if he could find them out, and destroy all his Enemies. Sir, said I, I have not injured you; the Terms are not equal; you fight with your Pardon in your Pocket, and I fight with the Halter about my Neck: Therefore, said I, Sir, if you press this unjust Quarrel, you are obliged to make the Terms of it equal. Said he, I am going to *Holland*, and I will accept of your Satisfaction upon the Coast of *Holland*: Said I, if you insist upon it, I will wait upon you into *Holland*; you shall keep the Matter secret between us, and let me have no more Messages from other Gentlemen, who in Case of Accident may be Witnesses against me; but send a Servant or Porter to me, and I will immediately come to you, and the Matter shall be concerted betwixt our selves in private. I then went home; and after I had been at home about half an hour, Mr. *Britton* came in: There were with me in the Room, my Sister *Steed*, Mrs. *Harlackenden*, and Mr. *Bentley*. Mr. *Britton* desired the Company to withdraw, for he wanted to speak with me; accordingly they withdrew: Says he, Mr. *Colepeper*, I come to you out of Friendship; you are a Gentleman of Quality, and Sir *George Rook* hath thought fit to proceed with you as such, and hath sent you a Challenge: Said he, I was with him Yesterday, and there, says he, we consulted together how to proceed with you; and, says he, here is an Affidavit of Colonel *Seymour's*: I read the Affidavit; it is pretty long; but, to the best of my Memory, it amounts to this, That I asked where Sir *George Rook* was, and how he did, abruptly, and in an odd manner. Now Mr. *Britton* having delivered me this Message, says he, Mr. *Colepeper*, here is a Paper which Sir *George Rook* will be satisfied with if you will sign it: He read the Paper to me, and shewed it me to read: I shall know it again when I see it; it was to this purpose, That I had never spoke amiss of Sir *George Rook* at Court, or at any Place whatsoever, or to Sir *Jacob Banks*, or any Person whatsoever; that if I had said any thing that could be taken as a Reflection by him or his Friends, I was heartily to ask his Pardon. Said I, This Paper is a most unworthy Thing, and I will lose the last Drop of my Blood before I will sign it. If you do not, said *Britton* to me, there are twenty of us; the Quarrel is in its own Nature a publick Quarrel: Sir *George Rook* is the Flower of *Kent*; he gets Offices and Preferments for his Friends; and there are above twenty of us will stand and fall with him; and I will stand by him for one, and I have a Friend or two hard by; if you will not sign this Paper, come out. Said I, Mr. *Britton*, you tell me this now, but have you seen Sir *George Rook* to Day? Says he, I know his Mind better than you. My Lord, he then tendered me the Paper again, and told me it was the last time that I should have that Favour offered; and said, If you will not sign it, you will be insulted: Said I, I will sooner die than sign it; I will defend my self. With that he goes out at the Door: Says my Sister,

A a a

Pray



Pray go to the Door with him: No, said I, the Villain hath challenged me. I then went to Mr. Bently, and told him, in Confidence of Secrecy, which he promised, that Sir George Rook and I had agreed to meet upon the Coast of Holland. Pray, Sir, said I, go along with me in the Street, for they go in Clusters, and I shall have no fair Play: Draw not your Sword, said I, and observe that I draw not mine first; I'll be upon the Defensive here, said I: And when I came to St. Clement's Church, Mr. Denew overtook me, and came to me.

*Coun. Queen.* What Morning?

*Mr. Colep.* The same Sunday Morning, about Two or Three Hours after I had been with Sir George Rook: I had my Eyes about me, as I thought it concerned me to have, and I often turn'd about to see who was coming. I saw Mr. Denew running after me: Seeing him run, I thought it not worthy of a Man to run from him: I stood, he comes up to me; says he, Well over-taken: Said I to him again, Your Business, Sir? Says he, I come to demand Satisfaction of you: Said I, I have been with Sir George Rook, and have satisfy'd him: Well but, says he, you have not satisfy'd me, and you are a Scoundrel and a Rascal; and if you will not draw, I'll cane you: I thought not fit to return his ill Language again; and in the next Place, I would give no Colour to the Quarrel, being upon their own Accounts. Said I, I see you are Two to One, because Mr. Merriam was there: No, said Mr. Denew, you are Three to Two; for I had this Mr. Cumin and Mr. Bently, my Friends, with me: No, said I, I will engage no Man in my Quarrel, but I will go with you myself; so I went with him, and as we were going, said I, Mr. Denew, What Quarrel have you with me? Says he, You spread out your Hands thus, and raised your Voice. Said I, Mr. Britton hath been with me, and told me of your Consultation; but Sir George Rook will not thank you for this, for I have been with him. Says he, I know Sir George Rook's Mind. Said I, I have been with him this Morning; Have you seen him since? I know his Mind better than you, said he, and you must fight with me. So I went along with him. When I came to the Corner of Little-Drury-Lane, I observed him to have a very great Cane in his Hand: Said I, you have a great Cane, which is an Advantage, if you have Skill to use it; you must lay down your Cane: Instead of laying it down, he up with it as fast as he could to strike me; with that I step'd back and drew my Sword, and he did the same; but he fumbled, having his Cane in his Hand, so that I believe my Sword was out rather sooner than his: I walk'd back about the Length of this Court, and there I stood; Mr. Denew came to me. Tho' I know something of Fencing, I had heard so much of Mr. Denew's Skill, that I was not willing to venture my Skill against his: I held my Sword close to my Body, with the Point up, and thrust without Parrying, and drew it back again to my self. This was the Way of my Defence; and we had, in this Manner, about seven or eight Passes at each other: At last, seeing the Advantage he had of me with his Cane, I threw first my Hat at him, which miss'd him; afterwards I threw my Peruke, which hit upon his Shoulder; I took that Opportunity, and made a home Pass at him: Says Mr. Denew, That is not fair, and dropt his Sword, that is not fair, said he: Fair—! said I; any thing to an Assassin; you are a Vil-

lain hired by ——— to Assassinate me. This, my Lord, was what I said.

*Coun. for Queen.* Mr. Colepeper, you said at the first Time, That Mr. Denew replied, that Sir George Rook had Friends, and there would be a Way found out for that: What was it?

*Mr. Colep.* That Sir George Rook had Friends, and there would be a Way found out for that.

*Coun. for Queen.* For that: What did you think was the Meaning?

*L. C. J.* Who said that?

*Mr. Colep.* Mr. Denew to me, my Lord, in the Inner-Temple-Lane

*L. C. J.* What, at the First Meeting?

*Mr. Colep.* Yes, my Lord.

*Coun. for Queen.* But your Servant that you sent, did he see him there?

*Mr. Colep.* Yes, so he said.

*Coun. for Queen.* That Day you was at Sir George Rook's, was Mr. Denew there?

*Mr. Colep.* I did not see him there.

*Coun. for Queen.* Who was by when you had the Scuffle at Little-Drury-Lane?

*Mr. Colep.* Mr. Cumin, and Mr. Bently.

*Coun. for Queen.* Was Mr. Merriam there?

*Mr. Colep.* Yes, he came with Mr. Denew, and was ready to make one.

*L. C. J.* Did Mr. Merriam draw his Sword?

*Mr. Colep.* No, my Lord; he stood by.

*Coun. for Queen.* What did Mr. Merriam say that Time in your hearing?

*Mr. Colep.* I did not hear him speak any thing.

*Coun. for Queen.* I ask you this, Did he say at any Time, that he had taken Sir George Rook's Quarrel upon himself?

*Mr. Colep.* Yes, Saturday Night.

*Coun. for Def.* Don't lead, don't lead.

*Mr. Colep.* My Business, said I, is with Sir George Rook. Mr. Denew said, He had another below, and he would end it there; says he, By God, I'll have you out.

*Coun. for Queen.* What is this Denew?

*Mr. Colep.* I don't know that he is a Gentleman, I believe he is not. He has, by Report, no very good Fortune, and is said to have fought in other Peoples Quarrels pretty frequently.

*Coun. for Queen.* Is he a Soldier, or a Fencing-Master, or a Gentleman? What is he?

*Mr. Colep.* He is one that hath great Skill in Fencing, and I thought him cull'd out for that Reason.

*Coun. for Queen.* What said Mr. Britton, at the Time he brought Colonel Seymour's Affidavit? What did he talk of a Consultation?

*Mr. Colep.* He told me, he was with Sir George Rook the Day before, and that they were consulting how they might proceed with me.

*Coun. for Queen.* How often was Mr. Merriam with Mr. Denew?

*Mr. Colep.* I saw him when Mr. Denew first deliver'd the Challenge, and at the Time of the Assault; and I understood he was in a Coach at Ten o'Clock at Night, when Mr. Denew challenged me out.

*Coun. for Queen.* Did Mr. Britton use any Words about saving your Life or Honour?

*Mr. Colep.* Yes; he said, It was all I had to save my Life, to sign that Paper.

*L. C. J.* Who said so?

*Mr. Colep.* Mr. Britton, my Lord, Sunday Morning, about an Hour and a half after I had been with Sir George Rook.

*Mr.*

*Coun. for Queen.* And when you refused it; what did he say then?

*Mr. Colep.* Says he; the Quarrel is publick in its Nature, Sir George Rook is the Flower of Kent, and there are above Twenty Friends depending upon him; and, says he, Come out, I will stand by him. I told him, it was unworthy of him to tender such a Paper, and I would lose the last Drop of my Blood before I would sign it.

*Coun. for Queen.* What did he say then?

*Mr. Colep.* Then, says he; you'll be insulted:

*L. C. J.* Then you did not hear Mr. Merriam say any thing, or do any thing?

*Mr. Colep.* Yes, my Lord, I saw him make a Motion, when Mr. Denew said; Here is Mr. Merriam, and I have another Friend hard by: And after the Scuffle was over, I met Mr. Britton hard by.

*L. C. J.* How far?

*Mr. Colep.* It was near Temple-Bar,

*L. C. J.* This Side, or the other?

*Mr. Colep.* Just this Side, coming through as it were. I was first overtaken by Mr. Denew near St. Clement's Church.

*L. C. J.* What Time of the Day was this?

*Mr. Colep.* It was during the Time of Divine Service.

*L. C. J.* Where were you going?

*Mr. Colep.* My Lord, I am a Man, as other Men are; I thought myself most barbarously used, and since I had made this Agreement with Sir George Rook; to give him Satisfaction upon the Coast of Holland, I went to tell Mr. Britton; that if he would go over with Sir George Rook; I would speak with him after I had spoke with Sir George Rook.

*L. C. J.* I ask you where you were going then?

*Mr. Colep.* I was going from my Lodging to beyond St. Clement's Church.

*L. C. J.* Upon what Occasion?

*Mr. Colep.* My Lord, to speak with Mr. Britton.

*L. C. J.* Did he lodge thereabouts?

*Mr. Colep.* Yes, my Lord, I think in Baswell-Court. I was in much Passion, that as I went, I felt not the Ground that I trod upon.

*Coun. for Queen.* How soon after Mr. Britton was gone from you did you go out?

*Mr. Colep.* Immediately.

*Coun. for Queen.* How soon after that did you see Mr. Denew?

*Mr. Colep.* Immediately he overtook me.

*L. C. J.* What Need had you to go after Mr. Britton? You had seen him just before at your Chambers; you say you went to speak with Mr. Britton; you say he was just before at your Lodgings; Why did you not tell him so then?

*Mr. Colep.* My Lord, my Passion began to rise afterwards, upon the Reflection.

*L. C. J.* Had you not told him as much before?

*Mr. Colep.* Yes, my Lord; but I had not bid him prepare to go, and that I would take him after Sir George Rook in Holland.

*L. C. J.* Did you intend to tell him, that you would meet with him in Holland, and deal with him after Sir George Rook?

*Mr. Colep.* I did so.

*L. C. J.* Did you go after Mr. Britton, to attack him immediately? Or only to tell him, that after you had discharged yourself of your Engagement with Sir George Rook, you would engage with him?

*Mr. Colep.* Yes, my Lord: But always on the Defensive Part here.

*Coun. for Queen.* How far from your Lodgings did Mr. Denew stand?

*Mr. Colep.* I lodge in Cecil-Street; and he overtook me about St. Clement's Church; and he run. Mr. Merriam was with him at that Time, and he pointed at him as another; I apprehended Mr. Merriam to be one of them.

*Coun. for Queen.* Was he there the first Day Mr. Denew came to you?

*Mr. Colep.* Yes, the first Day.

*L. C. J.* Did Mr. Merriam say any thing to you?

*Mr. Colep.* No, my Lord.

*L. C. J.* Did he hear what Mr. Denew said to you?

*Mr. Colep.* Yes, my Lord, at the Time of the Assault.

*L. C. J.* But the first Time?

*Mr. Colep.* No, my Lord; he gave me a wishful Look at going into the Coffee-House.

*Coun. for Queen.* Did he lay his Hand upon his Sword, or any thing?

*Mr. Colep.* No, I believe not.

*Coun. Def.* That is not fair: Pray, Sir, be pleased to answer me a Question or two. You say you was going to Mr. Britton's, Was it not with a Design to challenge him? You say likewise, Your Passion was so high, you did not well conceive what you did, Did you not design to challenge him then?

*Mr. Colep.* No; neither to challenge, nor to quarrel with him instantly. But I told Sir George Rook, at parting, that I hoped he would change his Resolution; but, said I, if you persist in it, I will wait upon you, and if he would persist in the Resolution, then I thought, that since Mr. Britton had used me in this Manner, he was fitter than another, that was an innocent Person.

*Coun. Def.* I think you say you had a Challenge from Sir George Rook; Was it in Writing, or by Word of Mouth?

*Mr. Colep.* By Word of Mouth, by Mr. Denew.

*Coun. Def.* You say, Mr. Denew overtook you by St. Clement's; Do you apprehend that they came thither to meet with you?

*Mr. Colep.* I apprehended it wherever I went; I looked to be attacked in the Street, and so I told Mr. Bently, and desired him to be with me, and take Notice, that I was upon the Defensive, for there will be Swords drawn.

*Coun. Def.* You say you lodged in Cecil-Street, How could you think to meet them there? Did you think they would lie in wait?

*Mr. Colep.* Yes, and that they were waiting for me every where: When I arose in the Morning, and looked from my Lodgings, I saw some Persons stand at the End of Cecil-Street, and bob, and run: These I apprehended were Setters.

*Coun. Def.* Mr. Colepeper; the 21st, you say, was the first Time that you had any Discourse with these People, Did you not send to Mr. Denew to come to your Chamber?

*Mr. Colep.* No.

*Coun. Def.* At Eleven o'Clock?

*Mr. Colep.* No, said I, if I should out-stay my Hour, come at Eleven to my Chamber; and accordingly he came: My Reason was, I found he would make a Quarrel of it, if I disappointed him but a Moment.

*Coun. Def.* Did you not send your Servant for him?

*Mr. Colep.* No, I sent my Servant to the Coffee-House, to see whether he was there.



*Coun. Def.* Did you not send for Mr. Britton?

*Mr. Colep.* No, I believe my Sister did; she thought him to be a Peace-maker, as he pretended himself to be.

*Coun. Def.* Give me Leave to ask you one Question: You say you were in great Passion, you thought your self likely to be attack'd, Why then did you go out that Morning to Mr. Britton's?

*Mr. Colep.* I have given you an Account of that already; I was provoked more than Human Nature could bear.

*L. C. J.* He says, that what Mr. Britton had offered to him, made him to be further enraged, and went after him to acquaint him, that after he had disengaged Sir George Rook, he would engage with him.

*Mr. Colep.* I don't know what I should have said to him, but those, my Lord, were my present Thoughts.

*Coun. Def.* When Mr. Denew met with you, were there not some hard Words that passed between you Two?

*Mr. Colep.* No, not any on my Part.

*Coun. Def.* Did you not give him some abusive Language?

*Mr. Colep.* I did not, Sir; he called me Scoundrel and Rascal, but I made no Return to him.

*Coun. Def.* But when he came to your Chamber at Ten o'Clock at Night, did you not tell him that you had been at Sir George Rook's, and that he had used you like a Scoundrel; and that you believed him to be like him?

*Mr. Colep.* No, nothing of that: I have not seen Sir George Rook, I said, and I believe he denied himself.

*Coun. Def.* Pray, Mr. Colepeper, the first Time Mr. Denew, you said, said nothing that was uncivil to you: Then he only fairly delivered to you a Message.

*Mr. Colep.* And that Sir George Rook had Friends; and, that there would be a Way found out for that.

*Coun. Def.* What sort of Reputation had Mr. Britton? Is he used to fight Duels? Is he famous for Duelling?

*Mr. Colep.* I know nothing of him: He is my Country-man, but I live a great Way from him.

*Coun. Def.* What Age is he of?

*Mr. Colep.* He is an able strong Man of his Age: He is in Court, you may see him.

*Coun. Def.* I ask you, on your Oath, upon the Time you admit he, Mr. Denew, was civil, did he give any Reflections at first?

*Mr. Colep.* He did not call me Scoundrel and Rascal the first Time.

*Coun. Def.* You admit, the first Time he was civil?

*Mr. Colep.* No, Sir, he gave me several Reflections, but did not call me Scoundrel and Rascal at the first.

*L. C. J.* Who did not?

*Mr. Colep.* Mr. Denew did not, at the first Time.

*L. C. J.* Did he ever call you so?

*Mr. Colep.* Yes, my Lord, at the Time of the Assault.

*Coun. Def.* Which call you the second Time?

*Mr. Colep.* When he came to my Chamber at Eleven o'Clock in the Morning, that was the second Time, then he would quarrel with me, because, as he said, I disappointed Sir George Rook.

*L. C. J.* When was this?

*Mr. Colep.* Saturday Morning, at 11 o'Clock.

*Coun. Def.* You say he went away satisfied?

*Mr. Colep.* I do not say he was satisfied.

*Coun. Def.* I ask you upon your Oath, the third Time, Whether there was not angry Words on both Sides? You gave him reproachful Language, and asked him what he had to do there at Ten o'Clock at Night? I think this was —

*Mr. Colep.* There was none on my Side: He said that we might end it: I said I had been with Sir George Rook, and I was of Opinion that he was at home, and deny'd himself.

*L. C. J.* That was Sunday Morning.

*Mr. Colep.* No, my Lord, I had been there Saturday Afternoon, and they said he was not at home then: This Gentleman asked, Whether I did not, at 10 o'Clock at Night, give Mr. Denew hard Words? I said, No.

*Coun. Def.* Did he quarrel with you on his own Account?

*Mr. Colep.* No, he declared it was upon Sir George Rook's Account; and said he would take the Quarrel upon himself.

*Coun. Def.* The third Time I thought you said he quarrelled with you upon his own Account?

*Mr. Colep.* Yes, on Sunday; then I spread my Hands out, I asked him what Quarrel he had with me? Said I, What is your Quarrel with me? Says he, You spread your Hands out thus, and spoke too loud.

*Coun. Def.* Was that all?

*Mr. Colep.* Yes: Then I asked him, said I, Sir, is this a Reason you must shed my Blood, or put me under a Necessity of shedding yours?

*L. C. J.* When was that?

*Mr. Colep.* On Sunday Morning, when he overtook me.

*Coun. Def.* The Question I would ask you is this; You have said, Sir, that Mr. Denew overtook you by Little-Drury-Lane End?

*Mr. Colep.* No, Sir; he overtook me behind St. Clement's Church.

*Coun. Def.* Then, pray Sir, when you had some Parley with him, I would ask you upon Oath, who drew the first Sword?

*Coun. Plain.* He told you that before.

*L. C. J.* He has told you the Manner of it.

*Mr. Colep.* I'll tell you again: Says I, you have Skill in Fencing, that is enough; you must lay down your Cane: With that, he took up his Cane to strike; I then stepped back to draw, and he was slower than I, because his Cane hindered him.

*Coun. Def.* Then who made the first Pass?

*Mr. Colep.* I cannot tell; I stood my Ground, he came up at me.

*Coun. Def.* I thought you said you made the first Pass at Mr. Denew.

*L. C. J.* He told you the Manner: He said he drew his Sword, and went back, and Mr. Denew came up to him.

*Coun. Def.* I would know who made the first Pass? You say you threw your Hat at him.

*Mr. Colep.* Yes, I did afterwards.

*Coun. Def.* But was it not you that made the first Pass?

*Mr. Colep.* Indeed I cannot tell; if there was any Advantage, I believe I might take it.

*Coun. Def.* Where was the Place proposed for your Fighting with Mr. Denew?

*Coun. Plain.* There was no Place; he way-laid him.

*Mr. Colep.*

*Mr. Colep.* He kept close to me, and would not let me stir a Foot from him, but I did not intend to run away from him.

*Coun. Def.* But you said you design'd to meet Sir George Rook in Holland.

*Mr. Colep.* Yes.

*Coun. Def.* Then how came it to pass you did not meet him?

*Mr. Colep.* Because I think Sir George Rook had not used me as a Gentleman; and I don't think myself obliged to observe Rules of Honour with him.

*Coun. Plaint.* That is not fair.

*Coun. Def.* Had not Mr. Denew his Cane in his Hand, when he fought you?

*Mr. Colep.* Yes; I am glad you ask me that Question: He held his Cane in his Left Hand, and I found it inconvenient in my Passing; said I, Coward, lay down your Cane, but he kept it in his Hand; but *English* People love fair Play, and those that stood behind him, cry'd out, Lay down your Cane; and then he fumbled to lay down his Cane, and I threw my Peruke at him, and made a Pass at him: This was after four or five Passes.

*Coun. Def.* I beg the Favour of you to ask you one Question, You say the Place you saw Mr. Denew first was the Toy-Shop.

*Mr. Colep.* Yes.

*Coun. Def.* Is it not a usual Place where Gentlemen used to stand?

*Mr. Colep.* Yes.

*Coun. Plaint.* When you were going along the Back-side of St. Clement's Church, I ask you, In what Manner did Mr. Denew come after you? Did he walk very fast, or run?

*Mr. Colep.* He run.

*Coun. Queen.* Did Mr. Merriam run?

*Mr. Colep.* I did not see him 'till he came up to me.

*Coun. Def.* I ask you this; At the Time you drew your Sword, did he offer to strike at you first?

*L. C. J.* Has he not told you plainly?

*Mrs. Steed* Sworn.

*Coun. Plaint.* Pray, Madam, Will you be pleas'd to acquaint my Lord and the Jury what you know concerning this Matter, and what pass'd between your Brother, Mr. Colepeper, and Mr. Denew, at his first coming to him?

*Mrs. Steed.* On the 21<sup>st</sup> of August.

*Coun. Queen.* Speak as loud as you can.

*Mrs. Steed.* On the 21<sup>st</sup> of August, my Lord, I went to the Temple to my Brother's Chamber, to go along with me into the Country, according to his own Appointment, and my Brother was not at all ready, at which I was mightily surprized; but my Brother was reserved to me, and I could not tell the Reason; I was loth to leave him in Town, because he had several Intimations in the Country, that he was mightily enquired after: So that, at length, I did lift it out, that there was some Danger in the Case, and sent my Coach and Equipage to Mr. Steed into the Country, that he might not come up to expose himself to Danger too: At length, while I was at my Brother's Chamber, about 11 o'Clock, a Gentleman came to the Door, whom I since understood to be Mr. Denew, and though I could not hear distinctly what was said, but something about Hours, punctual in Hours, and precise in Time, my Brother answer'd, that he had a Re-

spect to Sir George Rook, and Sir Jacob Banks, on the Account of the Ladies they had married, and the Family he had married into, and never meant him Wrong.

*Coun. Plaint.* Say that again, what your Brother said to Mr. Denew in relation to Sir George Rook.

*Mrs. Steed.* I heard him say he had Respect for them on the Account of the Ladies they had married; and never had the least Intention to affront or wrong them.

*Coun. Plaint.* What said Mr. Denew to the Matter?

*Mrs. Steed.* I do not know, I know no farther at the Temple. We went afterwards to Cecil-Street, and my Brother sent a Letter to Sir George Rook, and the Message that was brought back, was, That he expected him at his House, or would send immediately after him; quickly after, Mr. Denew came, and my Brother was gone out, then I thought it would be Time well spent to have Mr. Denew in my Lodging: Of myself I fancy'd, that while my Brother was abroad, he would come. I knew my Brother was at Tom's Coffee-House in Covent-Garden, and I sent my Brother Word, Mr. Denew was with me; I ask'd him if he wanted to speak with Mr. Steed, my Husband? He said, No, it was with Mr. Colepeper, him he wanted to speak to: I said I had sent to him, and soon after Mr. Denew wanted to be gone, and I said, It will make but a Comedy of Errors to go when I had sent and expected him to return; so Mr. Denew, after some Time spent, went away: He said, There was but one Coffee-house in the Strand, and there he was to be spoken with. Just after he was gone, I went to seek after my Brother, and just as I was taking Coach with Mrs. Harlackenden, Mr. Britton came, and ask'd after my Brother, Whether he was there, or at the Temple? I promis'd he should know where he was; so I took Coach, and when I could not find my Brother, I return'd. My Brother came to my Lodgings, with Mr. Cumin, a French Gentleman, who speaks *English* very ill, about dark; and a little while after, my Brother sent to Mr. Denew, to the Coffee-House, where he had appointed, and Mr. Denew came in a Coach, and came up into the Dining-Room; says he, Mr. Colepeper, I must speak with you in private: Says he, You may speak here: No, says Mr. Denew, you must come out: Says my Brother, I have been with Sir George Rook, and I could not find him; either he denied himself, or was not at Home: Says Mr. Denew, That shall not serve your Turn; let us make an End of it now: Says he, Come out; God I will have you out; God I will have you out. There was a Multiplicity of Words, but my Brother was civil and inoffensive all the while; and Mr. Denew menaced somewhat upon the Stairs, and went off: The next Morning, my Brother arose very early, and, contrary to my Desire very much, he went to wait upon Sir George Rook: I was full of Terror at that, and thought of nothing else, but to get Surgeons to heal the Wounds and Stabs, I knew nothing how Matters went, so my Brother return'd, and about Nine or Ten Mr. Britton came again.

*L. C. J.* Where?  
*Mrs. Steed.* To my Brother's and my Lodgings in Cecil-Street, and he enquiring over Night for my Brother, and not finding him, and doubting whether he would be at the Temple, or at



*Cecil-Street*, I sent a Messenger to tell him he was at *Cecil-Street*, and I thought him to be a Mediator, or else I should not have introduced him to my Brother; so when he came in, he desired that Mr. *Bently*, and we Women would withdraw.

*Coun. Queen.* Who desired this?

*Mrs. Steed.* Mr. *Britton* desired the Women to withdraw, of whom I was one. *Mrs. Harlackenden* and I stood at the Door, to hear what we could, being very inquisitive in so horrid a Cafe; and I heard them read something, but what that was I could not tell, but my Brother told me since, it was Col. *Seymour's* Affidavit.

*L. C. J.* Where was all this?

*Mrs. Steed.* At *Cecil-Street*, about Nine o'Clock a Sunday Morning: I heard him pretend to be a Mediator; he said he was a Mediator, and that he had a Paper, which if my Brother would sign, all would be well, and if he would preserve himself, he must sign it; I did not hear what the Paper was, but my Brother told him, that was unworthy of him, as a Mediator, to tender to him such a Paper, which he look'd upon as ignominious, and would rather die than sign it: Then, says he, you'll be insulted; then, says my Brother, I shall defend my self.

*Coun. Queen.* What did he say then?

*Mrs. Steed.* He said, Sir *George Rook* was the Flower of *Kent*, and the Quarrel was of a publick Nature; and for his Part, he would stand and fall by him, and so would Twenty more.

*Coun. Queen.* Did he talk of any Consultation he had?

*Mrs. Steed.* He said he would stand and fall by him, and so would Twenty more.

*Coun. Def.* I hope you will not put Questions into her Mouth.

*Another for Def.* You do not ask fair Questions.

*L. C. J.* She has answered very fair; pray don't quarrel.

*Coun. Queen.* What did he say farther?

*Mrs. Steed.* Mr. *Britton* came to the Door, he bid my Brother not to be in a Passion; I wondered he desired my Brother not to be in a Passion: Said I to my Brother, Will you not go to the Stairs with him? Says he, A Villain, he has challeng'd me out.

*Coun. Queen.* What Time of the Day was this?

*Mrs. Steed.* About 9 or 10 o'Clock.

*Coun. Queen.* When did your Brother go out?

*Mrs. Steed.* He went out immediately after that, and told me he was going to drink a Dish of Coffee: I was full of Concern, for Mr. *Denew* over Night had challeng'd my Brother out, and said he had a Friend below in a Hackney Coach.

*Coun. Queen.* Who said so?

*Mrs. Steed.* Mr. *Denew* said, he had a Man in the Coach below; a Friend he had too, as well as my Brother.

*L. C. J.* Where was this?

*Mrs. Steed.* It was at my Lodging in *Cecil-Street*.

*L. C. J.* Indeed I mistook, for I thought it was at Mr. *Colepeper's* Chamber.

*Mrs. Steed.* No, my Lord; it was in *Cecil-Street*, when Mr. *Britton* was going: Said I, Brother, do not you attend him to the Stairs? as I thought in Point of Civility he ought to do: Says my Brother, a Villain, he has just now challeng'd me out.

*L. C. J.* Who said so?

*Mrs. Steed.* My Brother said so.

*L. C. J.* Who did he say was a Villain?

*Mrs. Steed.* My Lord, I said to my Brother; why do not you wait on Mr. *Britton* to the Stairs? Says my Brother, a Villain, he has challeng'd me.

*Coun. Queen.* Pray give an Account of what pass'd over Night between you and your Brother.

*Mrs. Steed.* I have spoken to it already; if you will have it again, I will repeat it.

*L. C. J.* She hath said it: Have you any more Madam?

*Mrs. Steed.* I have done with that, my Lord. Just after Mr. *Britton* had left my Brother, Mr. *Bently*, an honest Gentleman, and Friend of ours, went out with my Brother, and quickly return'd, and told me of the Assault my Brother had had in the *Strand*; and that Mr. *Merriam* had said, my Brother had been too free in his Tongue with Sir *George Rook*.

*Coun. Def.* You say your Brother said, the Villain challeng'd me, but you did not hear Mr. *Britton* make any Challenge at all?

*Mrs. Steed.* He said he would stand and fall by Sir *George Rook*.

*L. C. J.* He said he would be insulted; that he would stand and fall with him.

*Coun. Queen.* And that Twenty more were engag'd; that they would make an End of it now.

*Coun. Def.* Madam, you were pleas'd to say, you apprehended Mr. *Britton* to be a Mediator: Pray, what Reason had you for thinking so?

*Mrs. Steed.* Because, Sir, he had been, when I was a Child, with my Father very civilly entertain'd; and he was a Man more in Years, I thought, than to undertake such a Bully-Affair.

*Coun. Def.* Then pray do you know any thing of Mr. *Britton's* being sent for to make up this?

*Mrs. Steed.* I my self sent for him by my Brother's Servant, because he desired the Night before to know where my Brother was.

*L. C. J.* When did he come to you?

*Mrs. Steed.* My Lord, he came Saturday in the Afternoon, to know whether my Brother was to be spoken with at the *Temple*, or *Cecil-Street*, or where: I told him he should know if he had a mind to it, and apprehending him to be a Mediator, I sent to him.

*Coun. Def.* In whose Name did you send to him?

*Mrs. Steed.* I did not mention any Name, but that my Brother was now in *Cecil-Street*.

*Coun. Def.* Did you your self send, or know of his being sent for more than once, or how?

*Mrs. Steed.* Never, I dare say, but that one time.

*Coun. Queen.* I would only ask you this Question, Was there any Talk of making an End?

*Mrs. Steed.* Yes.

*Coun. Queen.* I only ask you this, at the Time he refused the Paper, did he talk of making an End of it?

*Mrs. Steed.* He said, they might make an End of it now; it was not so positive as come and fight, but that he would make an End of it now.

*L. C. J.* Make an End of it now, Who said so?

*Mrs. Steed.* Mr. *Britton*.

*Coun. Def.* What did you mean by that? Your Brother did not understand him so; he thought that if your Brother would sign that Paper, that that would make a speedy End.

*Mrs. Steed.*

*Mrs. Steed.* I cannot descant upon his Meaning; his Terms were high, and I believe it might be fightings; and so I took to be his Meaning of his making an End of it.

*Coun. Queen.* Did he talk any thing of a Friend, then at the Time that he said he would make an End of it? Did he talk of having a Friend?

*Mrs. Steed.* No, he did not.

*Mrs. Harlackenden Sworn.*

*Coun. Queen.* Madam, will you acquaint my Lord, and the Jury, what you know concerning this Matter, of Mr. Denew and Mr. Colepeper, what you know of the whole Matter?

*Mrs. Harl.* Saturday, betwixt Five and Six o'Clock, there came a Gentleman into my House in Cecil-Street.

*L. C. J.* Pray speak out.

*Mrs. Harl.* My Lord, Saturday, betwixt Five and Six o'Clock, there came a Gentleman to my House in Cecil-Street, where Mr. Colepeper and this Lady lodg'd; I ask'd who he was? I was not in the Room, but I saw him; she said it was one Mr. Denew; my Lord, he staid, and walk'd about, about Half an Hour, and then went away again: After this, we thought, my Lord, that Mr. Colepeper was then with Sir George Rook; going about Five o'Clock from my House, to wait upon Sir George Rook, my Cousin and I being apprehensive of what might follow, we sent for a Hackney Coach to get a Surgeon, thinking he might be engag'd in a Duel with Sir George Rook; and just as we were going, Mr. Britton came up to the Door, Mrs. Steed made a Curtesy to him, and said, your Servant, Mr. Britton, and he, your Servant, Madam: Where, says he, is Mr. Colepeper? I do not know, says she: Does he lodge here? Yes, said she, he is here sometimes: She said she did not know whether he was at the Temple at his Chambers; immediately he went away in a Hackney Coach; we could not hear of Mr. Colepeper, and we came home again: About an Hour after Mr. Colepeper came in.

*Coun. Queen.* When was this?

*Mrs. Harl.* This was Saturday the 21st of August, Mr. Colepeper came in with a French Gentleman.

*Coun. Queen.* What Time?

*Mrs. Harl.* About Eight o'Clock.

*Coun. Queen.* Did Mr. Denew come that Night?

*Mrs. Harl.* Yes, Sir, about an Hour after that, between Nine and Ten, when we were going to Supper.

*Coun. Queen.* What did he say?

*Mrs. Harl.* Mr. Denew sent Word he was there to speak with Mr. Colepeper; Mr. Colepeper sent for him up, he ask'd him his Business; says he, I have Business with you, but demurr'd as if he did not care to speak before us; we still continued in the Room, Mr. Colepeper ask'd him his Business; Sir, says he, I have Business with you: my Cousin, I, and the Gentleman, still continued in the Room; says Mr. Colepeper, Do you come from Sir George Rook? if you do, I have been with him, he was not at home, or would not be at home, or to that Effect: What, says he, do you say Sir George Rook denied himself? No, says Mr. Colepeper, I don't say Sir George Rook denied himself, but he was not at home, or would not be at home: Then, says he, you did not go at the Time: Yes, says he, I did, or

very near it: Well, Sir, said he, I have Business with you, and I would have you come down Stairs; Sir, says he, I have none with you, my Business is with Sir George Rook, and I don't question but I shall acquit myself like a Man of Honour, says Mr. Colepeper: Says Denew, you're a Man of Honour, a Man of Honour; I don't question but you will acquit your self like a Man of Honour, in a deriding Way: Mr. Colepeper made Answer, it is no Business of yours, said he, and I have nothing to say to you: Have you not, says he, you will find I have with you, come down Stairs; and if that Gentleman be your Friend, let him come too, I have mine in the Coach. Mr. Colepeper insisted upon it, he had no Business with him, but with Sir George Rook, and he did not question, but that he should prove himself to be a Man of Honour. Says he, going down, you are a Man of Honour; you don't know what that is, you are a little Rascal. I called to the Man, William Paks, Will, says I, light this Gentleman to the Coach: I thought that Word was so base, to call him little Rascal, that I did not tell it to Mr. Colepeper when I came up.

*Coun. Queen.* Did Mr. Colepeper give any ill Language at that Time?

*Mrs. Harl.* No indeed, nothing at all; only said I have nothing to say to you, I do not know your Business, said he, and I shall not go down in the dark with you; and it was so dark, my Lord, that we could not see cross the Street when he came, and it is a very narrow Street where I live.

*Coun. Queen.* Do you know of Mr. Britton's coming on Sunday Morning?

*Mrs. Harl.* Yes, I do.

*Coun. Queen.* Pray then give an Account of it?

*Mrs. Harl.* He came, and I did not know but he might be a Man to accommodate the Business, and we did send, for Mr. Colepeper lay in my House, and he arose and went to wait upon Sir George Rook, and when he came back, he told us he had been with Sir George. However, I believe, the Reason why we sent for Mr. Britton, was, because I think Sir George Rook had told him, he had sent the Affidavit to him, as it prov'd he had, and Mr. Britton came up in a very Gentleman-like Manner, but we quitted the Room, and went into the Bed-chamber, there is a Wainscot Door between, and the Door was not quite shut neither.

*L. C. J.* Who sent this Affidavit?

*Mrs. Harl.* Mr. Britton, my Lord, had the Paper in his Pocket.

*L. C. J.* But who said the Affidavit should be sent?

*Mrs. Harl.* Mr. Colepeper had been told by Sir George Rook, he had sent it to him, when the Quarrel was betwixt them.

*L. C. J.* Now give an Account what pass'd between Mr. Britton and Mr. Colepeper.

*Mrs. Harl.* We left the Room to them, and they sat down together, and Mr. Britton told him, that he was very sorry for this Disturbance between Sir George Rook and him; and would be very glad to accommodate Matters between them, to do a friendly Office betwixt them.

*L. C. J.* Who said so?

*Mrs. Harl.* Mr. Britton, my Lord.

*L. C. J.* That he would be glad to accommodate Matters?

*Mrs. Harl.*



*Mrs. Harl.* Yes, my Lord, that he should be glad to do a friendly Office betwixt them. *Mr. Colepeper* said he was ignorant of the Offence against *Sir George Rook*, and ask'd what *Sir George Rook* alledg'd against him, so he pull'd out the Paper: We saw the Paper through the Door, *Mr. Colepeper* read it, and said, it was but of very little Consequence to make such a Quarrel: *Mr. Britton* said, it was that which was highly resented, and that he would be very glad to be serviceable on both Sides, to mediate in this Thing; *Mr. Britton* said this to *Mr. Colepeper*; they talk'd pretty low; I walk'd backward and forward in the Room; I did not hear every Word that was said, but at last I heard him say, that he had brought a Paper to him, from *Sir George Rook*: We saw him through the Crevices of the Door read the Paper; *Mr. Colepeper* said to *Mr. Britton* upon the reading of it, is this a friendly Proposal? before I will oblige my self to sign this, I will lose the last Drop of my Blood.

*Coun. Plaint.* What did *Mr. Britton* propose he should do with that Paper?

*Mrs. Harl.* Sign to it, wherein he had said any thing against *Sir George Rook*, to acknowledge it; but *Mr. Britton* got up, and said to *Mr. Colepeper*, says he, I find you are resolved to be hot: *Mr. Colepeper* said, he would lose the last Drop of his Blood; says he, I find you are hot, and you must expect what follows; for *Sir George Rook* is a Man of Honour, and hath done his Country such Service, that, says he, every Gentleman that is acquainted with him, must needs think himself obliged to espouse his Quarrel; and I am one, says he, and he walk'd out; and as he was going away, says he, you must expect to be insulted.

*Coun. Plaint.* Did he talk of any Number?

*Mrs. Harl.* I did not hear that.

*Coun. Queen.* Did you see *Mr. Merriam* there at any Time?

*Mrs. Harl.* No, I never saw him there.

*Coun. Queen.* You say *Mr. Colepeper* went to *Sir George Rook's* House.

*Mrs. Harl.* Yes.

*Coun. Queen.* How soon afterwards was it that *Mr. Britton* brought this Paper?

*Mrs. Harl.* About an Hour.

*Mr. Bently* Sworn.

*Coun. Def.* Call *Mrs. Harlackenden* again. Who was in the Room Saturday Night?

*Mrs. Harl.* *Mrs. Steed*, my self, and *Mr. Cumin*.

*Coun. Def.* No body else?

*Mrs. Harl.* No, Sir; No body else: It was between Nine and Ten, when we were going to Supper.

*Coun. Def.* You were saying that *Mr. Colepeper* went to *Sir George Rook's*, but when he came back, he told you he had seen *Sir George Rook*. You said so, Did you not?

*Mrs. Harl.* Yes, I did.

*Coun. Def.* Was this as soon as *Mr. Colepeper* came Home?

*Mrs. Harl.* Yes, it was.

*Coun. Def.* And you could hear as much of what was said by *Mr. Britton*, as *Mrs. Steed*; and *Mrs. Steed* as much as you?

*Mrs. Harl.* I heard what I have said.

*Coun. Def.* Did you not make it your Business to observe what was said at that Time?

*Mrs. Harl.* Yes, without doubt I heard what I have said, or I should not speak it: We were afraid the Business would go ill, therefore we were inquisitive: And this that I have said I did hear.

*Mr. Bently's* Evidence.

*Coun. Queen.* Will you acquaint my Lord, and the Jury, Whether or no you saw the Scuffle between *Mr. Denew* and *Mr. Colepeper*, at the End of *Drury-Lane*?

*Bent.* Yes, I saw it.

*Coun. Queen.* Was *Mr. Merriam* there?

*Bent.* Yes, he was.

*Coun. Queen.* What did *Mr. Merriam* either do, or say?

*Bent.* He said nothing at all in the Scuffle. *Mr. Denew* overtook us near *Lyon's-Inn*; and as soon as he overtook us, says he to *Mr. Colepeper*, Well overtaken. Says *Mr. Colepeper*, I have been with *Sir George Rook*, and I have given him Satisfaction. Says *Mr. Denew*, That is nothing to me, you must give me Satisfaction for what you did to me last Night. Says *Mr. Colepeper*, You are Two to One: No, says *Mr. Denew*, you are Three to Two; but, says he, I'll call another, and we will end it: No, says *Mr. Colepeper*, I'll engage no Gentleman in my Quarrel: Then, said *Mr. Merriam*, we will stay behind.

*L. C. J.* Who was the third Person?

*Bent.* *Mr. Cumin*, a Frenchman.

*L. C. J.* Who was it said, You have Three to Two?

*Bent.* *Mr. Denew* said, You are Three to Two; I will fetch a Third, said he. No, said *Mr. Colepeper*, I'll engage no Man in my Quarrel. Then, says *Mr. Merriam*, I will go away.

*Coun. Queen.* So that it is evident he came upon some Design. Hark ye, Do you know any Expression made use of by *Mr. Merriam* at the Time of the Scuffle?

*Bent.* I was saying, It was Pity this Thing could not be made up: Says *Mr. Merriam*, *Mr. Colepeper* ought to take Care what he says.

*Coun. Queen.* What ill Language did *Mr. Denew* say *Mr. Colepeper* had used towards him?

*Bent.* I do not know.

*Coun. Qu.* Was you by when *Mr. Britton* came?

*Bent.* Yes.

*Coun. Queen.* What was it he said?

*Bent.* I know not, for I retired.

*Coun. Def.* Was you with *Mr. Colepeper* then, when *Mr. Denew* met him by *Lyon's-Inn*?

*Bent.* Yes.

*Coun. Def.* Whither was he going?

*Mr. Colep.* I desired him to go along with me; for, says I, I shall have enow upon me.

*Coun. Def.* *Mr. Bently*, where were you going then?

*Bent.* We were going to *Boswell-Court*.

*Coun. Def.* Did you observe who first drew? *Mr. Denew*, or *Mr. Colepeper*?

*Bent.* I do not know, for I was in a sort of Confusion, and my Eyes were upon the Ground, and I do not know.

*Coun. Def.* Did you see *Mr. Colepeper* throw his Hat at *Mr. Denew*?

*Bent.* No; but I saw him throw his Peruke.

*Coun. Def.* Did he make a Pass at him at the same Time?

*Bent.* Yes, he did.

*L. C. J.* What, did he take his Wig off?

*Bent.* Yes, my Lord; he took his Wig off with his Left Hand, and threw it at him.

*Coun.*

*Coun. Def.* What did Mr. Denew say, when they were going to draw?

*Bent.* I do not know, I was a great Way off.

*Coun. Def.* When Mr. Colepeper came to you, or sent for you, Did not he tell you the Reason why he sent for you?

*Bent.* I apprehended Mrs. Steed had sent for me.

*Coun. Def.* You went along with Mr. Colepeper?

*Bent.* Yes, I did so.

*Coun. Def.* What did he tell you he was going to do?

*Bent.* He said he was going to speak with Mr. Britton, he told me he designed to hire a Vessel to go to Holland, to meet with Sir George Rook, and said it would cost him 100 l. and after that he had fought with Sir George Rook, he would fight with Mr. Britton.

*Coun. Def.* Did he not, upon your Oath, say he went to challenge Britton?

*Bent.* No, I do not remember that.

*Coun. Queen.* Did you observe any Cane in the Hand of Denew?

*Bent.* Yes.

*Coun. Queen.* How did he dispose of it?

*Bent.* Mr. Colepeper said, after some Passes, Coward, lay down your Cane; and so he laid it down.

*Coun. Queen.* Who passed first?

*Bent.* I do not know.

*Coun. Queen.* Did Mr. Denew pass before he parted with his Cane?

*Bent.* Yes, he did.

*L. C. J.* I ask you this Question: Mr. Bently, did not Mr. Denew lift up his Cane at Mr. Colepeper, before any Sword was drawn? Did you see that?

*Bent.* No, I did not see that, I was at some Distance, and in a little sort of a Confusion.

*L. C. J.* How far was you behind?

*Bent.* I believe half the Length of this Hall.

*Coun. Queen.* When Mr. Colepeper drew his Sword, Did he make up to Mr. Denew, or retire first?

*Bent.* He retired back first.

*Coun. Queen.* Upon your Oath, Did he offer to make any Pass at Mr. Denew, 'till Mr. Denew came up with his Sword drawn?

*Bent.* I did not observe that.

*Coun. Queen.* Mr. Colepeper retired, and Mr. Denew came forwards?

*Bent.* Yes.

*Coun. Def.* Did he not throw his Hat before any Pass?

*Bent.* I did not see that.

*Coun. Def.* Did he not throw his Wig before any Pass?

*Bent.* No, the Wig was last of all.

*Coun. Queen.* What did Mr. Colepeper do then?

*Bent.* Mr. Denew said it was not fair; Yes, says Mr. Colepeper, it is, and I will take all Advantages against Assassins, as I take you to be for Sir George Rook.

*Coun. Queen.* What was done after the Scuffle?

*Bent.* They run away, they one Way, and we another; this was at the May-Pole in the Strand. We met Mr. Britton at Temple-Bar.

*Coun. Queen.* At the Time they met at Lyon's-Inn, Did Mr. Colepeper decline?

*Bent.* He said he had been with Sir George Rook, and had given him Satisfaction.

*Mr. Wells opening for the Defendants.*

I am, in this Cause, Council, my Lord, for the Defendants, and as for Mr. Merriam, I think here is nothing that they offer can affect him, as  
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to any Challenge that he gave: He was in Company, 'tis true; he did nothing, but only gave good Advice; he did say indeed at last, Mr Colepeper must have a Care what he said; and, I think, it was good Advice if it had been well taken. And as to the other Two, Mr. Colepeper you have heard is the material Evidence in this Matter. Gentlemen, you will consider who are the Witnesses; and what are the Circumstances of this Fact. It is, my Lord, a thing we cannot possibly be provided with many Witnesses in, being transacted betwixt Mr. Colepeper, and these Gentlemen, therefore we have the Disadvantage in this Case, because the Law does say, I must own; that Mr. Colepeper is allowed to be a Witness, but we cannot be Witnesses, Gentlemen, for our selves, in the Matter; and it being a private Transaction, it is not to be presumed that we can make any great Defence; nor have any positive Witnesses; but that there was a Quarrel between himself, and Sir George Rook, is declared by them: And I believe very provoking Language hath been given by Mr. Colepeper, which might occasion what hath happened. As for Mr. Denew, he is a Gentleman of very good Fashion; a Gentleman of Estate and Quality; a Justice of the Peace in the Country, and not such a kind of Person; as Mr. Colepeper would represent him to be: He is a Person that Sir George Rook hath an Intimacy with; and has had for a great while together. Being at Sir George Rook's House the 21st of August, the Day that is fixed upon, then truly Sir George Rook did say, Mr. Colepeper had highly offended him, and he did expect he would give him some Satisfaction for what he had done; upon that we do own; that Mr. Denew, as from Sir George Rook, did go in the Morning to expostulate with Mr. Colepeper; the Reason of this Usage; he met him about the Temple-Gate, and acquainted him with it; says he, I cannot come to you these Two Hours, if you go into the Rainbow Coffee-House, and stay Two Hours, I'll come; but he did not come: And Mr. Colepeper, as much Apprehension as he had from those Assassins, sent for this Gentleman up to his Chamber in the Morning; and when he came, it is true what Mr. Colepeper says, That he said, he had said nothing of Sir George Rook, but that he was a very honest Gentleman.

*Mr. Colep.* I did not say that neither.

*Mr. Wells.* Says he, If you will say that, I believe Sir George Rook will put it up; for Sir George Rook is a Man that will have his Honour vindicated, for it is not fit such Language as you have spoken, should be spoken of him. Says he, If you will go to Sir George Rook, I shall be glad, because I believe there will be an End of it. No truly; Mr. Colepeper could not go then, but Two Hours after he would go: Says Mr. Denew, You say you will come within these Two Hours, But will you go certainly at the Two Hours End? Yes, said he, I will be there within Two Hours; then, says he, I have nothing to say; I am very glad you design it. My Lord, he afterwards, as he frequently did, dined with Sir George Rook: Mr. Denew, you may think, did acquaint him with what passed between Mr. Colepeper and him, and about Two o'Clock, after Dinner, there came a Message from Mr. Colepeper to Sir George Rook, to tell him, that he could not meet him then; but he would meet him at Five o'Clock, which is the Time Mr. Colepeper is agreed he was to meet:

Ecc

Truly



Truly, Mr. Colepeper did not come according to his Appointment; and Mr. Denew, says he, I have staid here at Home on purpose; I wonder he should give me so much Trouble, and doth not come according to his Promise and Appointment; and then there came a Man with a Letter from Mr. Colepeper, a Message by his Servant: It was, That he could not come then, at Five o'Clock; but, says he, if you would needs have me meet you, if you appoint a Time and Place, if you insist upon it, I will not fail: Upon that, Mr. Denew being there, Tell him, says Sir George Rook, I'll stay at Home on Purpose, 'till such Time as he comes; for I have a great Desire to speak with him, and know the Truth of this Matter, that is spread so much abroad. He went, and he was not at Home, and he staid 'till Ten o'Clock at Night, and then he came up into the Chamber: Mr. Colepeper was in another Room, but Mr. Colepeper hearing his Voice, says, Let him come up Stairs, (for he was a Pair of Stairs higher;) Mr. Denew comes up; Mr. Colepeper \* holding the Door in his Hand, would not let him, at first, come in. Your Business, Sir? says Mr. Colepeper: You know my Business well enough, said Mr. Denew. He told him, That he came from Sir George Rook; he said, That he had no Business with him; he had been with Sir George Rook, and he did deny himself, like a Scoundrel Fellow, for at Home he was, but would not see him, and he believed him to be such another; he took this Mr. Denew to be a Scoundrel Fellow too, and he would have nothing to say to him. Mr. Denew said, my Lord, He did not expect such Language as that was; and whatever your Quarrel, says he, may be with Sir George Rook, is no matter, but you have given me Provocation: Says he, If you have been with Sir George Rook, you have heard the Matter, and shall not talk of it; but since you have given me such provoking Language, you cannot expect I should take it very calmly; and away went he. The next Morning, my Lord, by pure Chance, about Temple-Gate, he saw Mr. Colepeper in his Passage, and there he told him, says he, You may remember the Language you gave me last Night; it is not such Language that one Gentleman ought to give to another, and you must consider, and learn better Manners. Says Mr. Colepeper, What need have you to trouble yourself with Sir George Rook's Business, when I have been with him? Says he, It is my Business that I concern myself about; and upon that, there was some sort of a Challenge upon his own Account. But if this be every Tittle true, it will not justify the Indictment; that is, That he offered to fight the Duel on Sir George Rook's Behalf; for this Quarrel was upon the Account of that Gentleman himself. When he came to other Witnesses, that Gentleman who came last, he tells you, That it was upon his own Account, and not upon the Account of Sir George Rook: So that so far as there were any Witnesses present, so far they give you that Account. My Lord, as to this Mr. Britton, there is no great Matter fixed upon him: In this Cause, they do own, That Mr. Britton was taken for a Friend; and Mr. Colepeper's Sister sent for him as a Mediator; she look'd upon him as a Friend,

and did rightly think so; for indeed, he was so purely in this Matter, and had no Design nor Enmity against Mr. Colepeper; he hearing there had been such Provocation, he went purely to acquaint him, that Sir George Rook was angry, and he would have him make up this Matter, and sign an Acknowledgment, but he would not; and thereupon he said, Sir George Rook was the Darling of Kent, and he would be insulted if he would not sign that Paper; every one would espouse his Quarrel, and he among the rest, if he would not acknowledge that Rudeness. My Lord, this is no Challenge; Mr. Britton only told what the Event would be, if he did not make Acknowledgment for that Offence; every Gentleman would espouse Sir George Rook's Quarrel: This was only to shew the Esteem Sir George Rook had in the Country; that Mr. Colepeper would be insulted, not by Sir George Rook, but by the Country; and he might well think so, if it were true what is reported of Mr. Colepeper, in Reference to Sir George Rook: But he told him what he believed the Consequence would be; and he came purely as a Friend, and nothing else; so that, my Lord, there is nothing to be fixed, that he challenged Mr. Colepeper to fight upon Sir George Rook's Account; he came purely as a Friend, and nothing else. Your Lordship hears that they would insinuate, That these Gentlemen lay'd in wait, and were hired on purpose to affront and assault this Gentleman, and that they were Men fit for such evil Practices and Designs; but there is nothing that hath been proved of that. These Ladies talk of Stories they heard in the Country; and if they had a Mind to assault Mr. Colepeper, he was at his Chambers to be heard of, What need they so much lie in wait? And even this very Day he went abroad when this Battle happened. But, my Lord, How could it be possible this should be otherwise than Chance? Mr. Colepeper he lodged in Cecil-Street in the Strand, they met him at Wick-Street, near St. Clement's Church; it could not be presumed, that they should lie in wait there, expecting to meet with him; so that the very Circumstance of the Place shewed there could be no Design of their meeting him in that Place; for how could they suppose he should come there, since he lodged in Cecil-Street? And then, my Lord, it shews he had not those Apprehensions of Danger, that he was not so much concerned, as he would have us conceive; for he goes immediately out, took Two or Three with him: It was to challenge this Man, but he would make you believe it was not a present Challenge, but after he had fought with Sir George Rook in Holland, he would fight with this Gentleman there; so that, my Lord, this shews he was far from those Apprehensions of Danger as he hath pretended. We shall call two Noble Lords to these Gentlemen's Reputations, that will give an Account of these Gentlemen, that they are no such Men as they pretend; and then we hope, though it is our Misfortune not to have Witnesses, the Matter will be taken, as in all Probability it was.

L. C. J. Mr. Wells, pray tell me the Affront Mr. Colepeper gave Mr. Denew?

Mr. Wells. I did open it to your Lordship.

\* Not true, nor offered to be proved, but being not to the Point, was let pass, as many other Things for the same Reason.

*L. C. J.* It was not plain enough for me to see.

*Mr. Wells.* I am sorry for that, my Lord, it is often my Misfortune; but, with humble Submission, it was at Ten o'Clock at Night when he came; he told *Mr. Denew*, he had been with *Sir George Rook*. *Mr. Colepeper* said, says he, I have been with *Sir George Rook*, but, like a Scoundrel Fellow, he denied himself at home, and you are such another Scoundrel.

*L. C. J.* Did he say that?

*Mr. Wells.* Yes, my Lord, he did.

*Counc. Queen.* Have you any Evidence of that?

*Mr. Wells.* My Lord, we have nothing but *Mr. Denew*, and he will give his Oath on it, as well as *Mr. Colepeper* his Oath to the contrary.

*L. C. J.* *Mr. Colepeper*, you are upon your Oath, Did you say *Sir George Rook* was a Scoundrel Fellow for denying himself?

*Mr. Colep.* Never, neither then, nor in my whole Life.

*L. C. J.* Did you say *Mr. Denew* was a Scoundrel Fellow?

*Mr. Colep.* No, my Lord, never: I saw that *Mr. Denew* wanted a Colour, and I was resolved not to give him one.

*Another Council for the Defendants.*

My Lord, it cannot be expected, as this Cause stands, that we can be able to give much Evidence: If we could do it, I would not take up your Lordship's Time with any Observations of my own; but I think it is very observable upon the Indictment, that the Gentlemen on the other Side, have scarce given us Leave to make an Answer to what was said, in Reference to the Defendants.

*L. C. J.* You had best to call what Witnesses you have; and then if you have a mind to make Observations you may.

*Counc. Def.* My Lord, we would first beg Leave to introduce another Piece of Evidence, the Paper that I have in my Hand.

*Colonel Lee call'd.*

*Counc. Def.* We would first beg Leave to shew how *Mr. Britton* went to *Mr. Colepeper*, and the Gentlemen that we must bring, that he shewed the Paper to first: I believe, my Lord, it will appear there was nothing in the Paper but what any Gentleman might sign.

*Counc. Def.* Speaking to *Col. Lee*. Did *Mr. Britton* shew you that Paper at any Time, and on what Account?

*Col. Lee.* *Mr. Britton* and I was at the Coffee-House upon the 21st of *August*, talking of the Behaviour of *Mr. Colepeper* to *Sir George Rook*: Considering the different \* Characters of these Gentlemen, we thought it advisable to have an Accommodation; and in order thereunto, we proposed the drawing up of a Paper; *Mr. Britton* drew it up, and upon Perusal, I † approved of it, and did think there was nothing in it but what *Mr. Colepeper*, or any Gentleman might set their Hands to, without any Reflection upon their Reputation; and thought *Sir George Rook* would accept of it; and accordingly *Mr. Britton* went, and said *Mr. Colepeper* was not at home. My Lord, I believe this is the Paper.

*Counc. Queen.* But suppose *Mr. Colepeper* would not sign that Paper: What then?

*Col. Lee.* There was not a Word spoken of that.

*Counc. Queen.* How many Gentlemen were there talking over this Matter?

*Col. Lee.* No body but *Mr. Britton* and myself, that I know; in the Room there were some other, but no other People knew any thing of the Matter.

*Serj. Darnel.* But was there any thing said in Case he should refuse to sign the Note?

*Col. Lee.* No.

*The Paper shown to Mr. Colepeper.*

*Counc. Def.* Is that the Paper?

*Mr. Colep.* I am almost sure it is not.

*L. C. J.* What do you say?

*Mr. Colep.* Indeed, my Lord, I believe it is not.

*Counc. Queen.* Speaking to *Col. Lee*. Can you say it is the same Paper?

*Col. Lee.* I cannot say it is the same Paper.

*Counc. Queen.* But is that a Copy of the Paper that was drawn up?

*Col. Lee.* I do believe it is the same Paper.

*Counc. Queen.* But he was not at the Delivery of the Paper to *Mr. Colepeper*; therefore it is not Evidence.

*Serj. Darnel.* My Lord, it cannot be read; for to read it, is to make it Evidence: And it does not appear by any Proof, that it is the Paper, but on the contrary, is sworn by *Mr. Colepeper* not to be the Paper.

*L. C. J.* Speaking to *Mr. Colepeper*. Can you say it is not the Paper?

*Mr. Colep.* My Lord, to the best of my Judgment it is not the Paper, nor the Bigness of it; and there is this Clause left out, *That I was to satisfy Sir George Rook, and all his Friends.*

*L. C. J.* Was that in the Paper you had?

*Mr. Colep.* My Lord, in the Paper I had, I was to ask Pardon of *Sir George Rook*, and all his Friends, tho' I had never spoke amiss of him.

*Counc. Def.* My Lord, he does not believe it to be the same Paper:

*Mr. Colep.* I do not believe it to be the Hand:

*L. C. J.* It cannot be read as Evidence.

*Counc. Def.* We do not offer it, my Lord, as the Paper that was actually shown, but that the Jury may see that *Mr. Britton* went upon an amicable Design, we offer it so far.

*Counc. Queen.* Do you, *Mr. Colepeper*, say it was the same Paper?

*Mr. Colep.* That which was tender'd to me, was most ignominious.

*The Lord Winchelsea Sworn.*

*Counc. Def.* Pray, my Lord, will you be pleased to give an Account of what you know of these Gentlemen.

*Lord Winchelsea.* When I understood they were under such an extraordinary Prosecution, I could do no less Right, than to appear for them here: I wonder that these Gentlemen, that are known to be Gentlemen of good Estates, and great Honour, should be called Fencing-Masters and Duellers. I'll speak first of all to *Mr. Britton*, who is a Gentleman of that Esteem and Worth

\* *Mr. Colepeper* is glad of the different Character; and hopes the Reader will think it well made out.

† Whether this is any Credit to the Paper?



in Town and Country, that I need say but a very few Words of him: I have long had an intimate Acquaintance with him; there is nothing can be less injurious to any Man than he: He is one that values himself upon his Honour and Reputation; and would not do a base Thing for the World. And Mr. *Denew* is represented as a Fencing-Master, and Dueller, a Master of Defence; it is well known he is a Gentleman of good Repute.

*L. C. J.* He is esteemed to be one that is skilful in Fencing.

*Lord Winc.* He has a Commission from the Queen, and hath a double Commission from the Prince at this Time, and is now in as good Circumstances as any Man in the Country, and is well known to be of a good Family; and I am sure he would be very sorry to change \* Circumstances with this Gentleman that makes Complaint against him; I never knew him give Offence to any Man.

*Coun. Def.* Was he a quarrelsome Man?

*Lord Winc.* He is a Man of Honour, and will endeavour, when he is injured by any Man, to do himself Right: He hath a great Regard to his Reputation.

*The Earl of Thanet Sworn.*

*E. of Thanet.* I have known Mr. *Britton* for near these twenty Years past; and I never heard but that he acquitted himself, in all the Business he transacted, like a very worthy honest Gentleman, and an understanding Man; and this is the just Character he hath in the World; and this did recommend him to the Station he now is in to serve the Queen: He hath been a very civil honest Man, and I never heard but he was ready and willing to do all kind of good Offices. As to the other Gentlemen, I believe Mr. *Denew* to be an honest Gentleman; but as to Mr. *Merriam*, I never heard his Name before.

*Coun. Def.* Do you think, my Lord, they would be guilty of an Assassination?

*E. of Thanet.* No, indeed.

*Coun. Def.* Is Mr. *Britton* in any Place in the Government?

*E. of Thanet.* He has had a Place in *Dover* these twenty or thirty Years; and I believe, by the just and good Character he hath had, is made One of the Commissioners of the Custom-House.

*Coun. Def.* Are they taken Notice of to be Men of peaceable Temper; or, Are they quarrelsome Persons?

*E. of Thanet.* I believe of Mr. *Britton*, by all that I know of him, that there is not another Man in *England* can believe he would have any such Intention of being in an Assassination.

*Lord Winc.* As for Mr. *Merriam*, hearing his Name, I should have said something of him. He is now actually employ'd under the Prince and me; and I verily believe he can't be concerned in a base Action.

*Sir Benjamin Bathurst Sworn.*

*Bathurst.* I have known Mr. *Britton*, my Lord, these twenty-seven or twenty-eight Years: I never knew a Man in my Life more inoffensive, or more desirous to do any good Office; a Man of a very good Temper, never inclined to quarrel; never provoked; but is always ready to do all

the good Offices he can. Mr. *Denew*, I hear, hath been slightly spoken of, which I wonder at. He was bred a Merchant; has always behaved himself very well, and is a Gentleman of a good Family, and plentiful Estate, and hath lived in great Reputation, and did sometimes trade as a Merchant; and that not answering, he lives now upon his Estate in the Country: As far as I have heard of Mr. *Britton*, he hath a good Character of all Mankind, and is now One of the Commissioners of the Custom-House, and I believe is very well esteemed by all that know him.

*Coun. Def.* Do you think he would have been guilty of an Assassination?

*Bath.* No, indeed, I do not.

*L. C. J.* (*speaking to the Queen's Council.*) I would ask you how you fix any Crime upon Mr. *Britton*? I will suppose the Words in the Paper which he shewed Mr. *Colepeper*, were too severe, and not fit for a Man to sign: But does that make him Guilty?

*Coun. Queen.* My Lord, he challenged him in express Terms.

*Serj. Darn.* My Lord, Mr. *Colepeper* says, Mr. *Britton* came to him, and proposed the signing of a Paper; and that now they shall bring another Paper, and not the same that was first tendered to him, I think is very extraordinary, and makes against them: But then, my Lord, after the Paper was rendered to Mr. *Colepeper*, (but refused by him,) immediately after that Mr. *Britton* gave the Challenge.

*L. C. J.* That is a Question.

*Coun. Queen.* Says he, Sir *George Rook* is the Flower of *Kent*; does friendly Offices, promotes and advances his Friends; and there are twenty will engage themselves in his Quarrel, and I myself for one.

*L. C. J.* Mr. *Colepeper*, Pray tell us the Matter.

*Colep.* Says he, I see you have a Friend here, and I have one hard by; come out, and end it.

*L. C. J.* I have a Friend by — But this is not an Assault.

*Colep.* Says he, I will take the Quarrel upon my self, and I will stand and fall by Sir *George Rook*.

*Coun. Queen.* Did you hear him say so?

*Colep.* Yes, my Lord.

*Coun. Queen.* And Mrs. *Steed* said the same.

*L. C. J.* Did she say the same?

*Colep.* Yes, my Lord.

*L. C. J.* Mrs. *Steed*, Did you hear him say that he had a Friend below, and therefore he would have him go down and end it; and, that he would take the Quarrel upon himself?

*Mrs. Steed.* He said he would make an End of it presently; that he would stand and fall by Sir *George Rook*, and so would twenty more; and that if he did not sign, he would be insulted; that there were twenty engaged in the Quarrel.

*L. C. J.* But did he say, Come out, and end it now; I have a Friend hard by?

*Mrs. Steed.* I did not hear him say, Come out; but I heard him say, there were twenty more would stand and fall with Sir *George Rook*.

*Serj. Darn.* Did you hear him say any thing of coming out?

*Mrs. Steed.* He said, we will end it presently.

*L. C. J.* Did he say, Come out?

\* 'Tis presumed his Lordship might be misinformed, nor are the Defendants indicted for Poverty.

*Mrs. Steed.* He said, We will make an End of it presently.

*L. C. J.* Call Mr. *Bently* again: Was he there then?

*Colep.* No, my Lord, Mr. *Cumin* was there.

*L. C. J.* Mr. *Bently*, Was you by then? Did you hear any such Discourse?

*Bent.* No, my Lord, I did not.

*L. C. J.* Was you by when Mr. *Britton* was there on Sunday Morning?

*Bent.* I was by when he first came in.

*L. C. J.* Did you hear any Discourse?

*Bent.* No; I perceived they desir'd to be alone.

*Coun. Def.* My Lord, I would observe, that the Indictment is laid several Ways: Besides the Confederacy, they charge us with particular Offences in Challenging. As to the Beginning of the Indictment, they take in all the Defendants; there are three of them, and they say they entered into a Conspiracy, to consult and contrive how they might do a Mischief to Mr. *Colepeper*. They begin, my Lord, only with Mr. *Denew*, and say that Mr. *Denew* did offer himself to Duel with Mr. *Colepeper*, on behalf of Sir *George Rook*: And as to Mr. *Merriam*, that he did meet them, and had some Discourse with Mr. *Colepeper*. My Lord, They have endeavour'd to support a Conspiracy; and if they fail of the Proof of it, they know their whole Indictment fails: As to Mr. *Britton*, and Mr. *Merriam*, there is no Evidence that can concern them; but suppose there should be some warm Words between Gentlemen, are those Words indictable, unless there be some Things premeditated in order to bring to pass such a Conspiracy? But, my Lord, they have not produced any Evidence whatsoever, that Mr. *Britton*, one of them, ever spoke to, or saw the other two, Mr. *Denew* and Mr. *Merriam*; so that, as to Mr. *Britton*, there can be no manner of a Conspiracy. It does not appear that he is guilty of any Fact directly; it has appear'd indeed, that Mr. *Merriam* did retire; so that Mr. *Merriam* and Mr. *Britton* are out of the Cause; so that Mr. *Denew* is alone in the Conspiracy: He conspired by himself, and there must be \* Three to make it a Conspiracy; and we must submit to your Lordship's Judgment how far the Challenge is indictable. Supposing Mr. *Britton* had said *Come out*, How is that indictable, unless it had been in order to an Assassination? And as to Mr. *Britton*, unless there be a Conspiracy, it will not do.

*Another of the same Side.* They have laid it a joint Assault, as an Action of Battery, against Two; but upon Evidence, My Lord, in the Indictment, we submit it whether it must not be laid severally.

*Coun. Queen.* It is in the Indictment; they are all several Overt-Acts of the Conspiracy.

*L. C. J.* Mr. *Britton* is not indeed guilty of Fighting; but the Question is, Whether or no what he said, amounted to a Challenge?

Then the Lord Chief Justice read over some of the Indictment.

*L. C. J.* This concerns Mr. *Denew*, and Mr. *Merriam*; but not Mr. *Britton*.

Mr. *Wells.* My Lord, Here they have got Writers in Short-Hand; and Mr. *Colepeper* hath bespattered Sir *George Rook*.

*Coun. Queen.* We desire to know how this was, if it should come abroad.

*Another of the same.* There is no body says any thing against Sir *George Rook*.

*Coun. Def.* My Lord, we desire to be heard for Sir *George Rook's* Honour.

*L. C. J.* Here's no body questions Sir *George Rook's* Honour.

*Coun. Def.* Your Lordship will please to remember-Mr. *Colepeper* did say in his Evidence, that he sent his Man into the Room to look for Sir *George Rook*, that he was not there; and he sent him up-stairs, that he was not found there; and he concluded with this, that he did verily believe that he was at home. We will call our Witnesses to prove that he was not at home.

Col. *Crawford.*

*Coun. Def.* Will you give an Account where Sir *George Rook* was on the 21st of August, Saturday?

Col. *Crawf.* My Lord, I came to Sir *George Rook's* House, I believe it was that very Afternoon, about Four o'Clock: Says I, Sir, you appointed me to call on you about this Time; I am ready to wait upon you: No, says Sir *George*, I can't go with you now, because Mr. *Colepeper* hath writ me a Letter, and hath appointed Five o'Clock to come and speak with me, and hath writ to me with a great deal of Compliment, that he will come at Five o'Clock, and desired me to be within. Said I, Sir, then I will stay till Five o'Clock, and stay'd till almost Six. Says Sir *George*, No body that appoints at Five, will come now: Says he, We will send for a Coach, and go to my Lady *Hallifax's* House. We went therefore, my Lord, from his House, and went no where else but to see my Lady *Hallifax's* Children. I stay'd with him, my Lord, till Seven: Says he, when he came back, (to the Porter,) Who has been to enquire for me? Says he, there was such and such, and there has been Mr. *Colepeper*: How long ago, said Sir *George*? A little while, says the Porter: This is very well, says Sir *George*; almost Seven, and he appointed Five o'Clock. This I have Sworn to.

*Coun. Queen.* We do not endeavour to affect Sir *George Rook's* Reputation in any Respect; his Reputation is + indisputable.

*Colep.* My Lord, I sent a Letter at Four o'Clock.

*L. C. J.* You say, you sent one, at One o'Clock.

*Colep.* Yes, my Lord.

*L. C. J.* And then sent another at Four o'Clock: Why did you send it?

*Colep.* To excuse my self for not coming at the first Appointment; for I saw my self beset.

*Coun. Queen.* We desire to ask Mr. *Colepeper* what Mr. *Britton* told him of a Consultation with Sir *George Rook*?

*Colep.* Mr. *Britton* told me he was in a Consultation with Sir *George Rook*, and Mr. *Denew*, how to proceed with me: When my Letter came, he was there, and in Consult.

*Coun. Def.* My Lord, We insist upon it, that these Fellows should not go on Writing.

Ordered, That the Writers be turn'd out of the Court.

And accordingly they were turn'd out at the repeated Instance of some on the Part of the De-

\* This not Law.

+ Very obliging.



endants, who shew'd themselves concern'd for Sir George Rook's Honour, and fear'd the publishing a Case that would ill bear the Light. However, thus far the Short-Hand Writers had proceeded with great Exactness; and they are ready, by their Hand-Writing and Notes, to justify all before mention'd in this Trial, which by this time was very near ended.

What follows, *William Colepeper* offers to the Reader from himself: Perhaps the World might be better satisfy'd, if the whole had been taken by the Short-Hand Writers, who immediately committed all to Paper; but *William Colepeper* being under a Disability in the Case, is to supply the rest by his Memory. And if any Doubt should arise, (as he hopes and believes there will not,) concerning the little Remainder that he undertakes to perform, he must appeal to the many Persons present for the Fidelity and Exactness of his Relation.

Mr. *Colepeper* made this Answer to what Colonel *Crawford* depos'd.

My Lord, I was telling your Lordship and the Jury, that Mr. *Britton* had threatned me with twenty on Behalf of Sir George Rook, if I would not subscribe the Paper before mentioned. My Lord, Mr. *Britton* named four of the twenty. I have indeed thought it not proper to mention after Mr. *Britton*, the Names of Gentlemen on such an Occasion; but since Colonel *Crawford* comes here voluntarily, and is suffer'd to swear for Sir George Rook's Honour, (as I hear it call'd,) out of the Cause, I think I ought to tell your Lordship, that Colonel *Crawford*, who makes himself out to have been there, (I mean at Sir George Rook's House,) was one of the twenty particularly nam'd to me by Mr. *Britton*: And, my Lord, I must farther observe, Colonel *Crawford* has sworn that Sir George Rook went to see my Lady *Hallifax*'s Children; but Sir George Rook, on the next Day Morning, when I waited on him at his House, told me, when I spoke about his being deny'd, that he was gone to a Committee of the Council.

Then one of the Council for the Queen spoke to this Effect:

My Lord, I wonder to hear this Dispute about Sir George Rook's being at home when Mr. *Colepeper* went to his House: What Colonel *Crawford* and Mr. *Colepeper* have depos'd, is very consistent: Mr. *Colepeper* says, he was there about Five, and making his Man search for Sir George, believ'd he was at home; now Colonel *Crawford* comes and puts the Matter out of all Doubt, and proves that Sir George was at home at the Time.

Here ended the Evidence; the summing up of which by the Lord Chief Justice *Holt*, and his Lordship's Remarks to the Jury, Mr. *William Colepeper* thinks not proper for him to give an Account of; nor will he undertake, on his bare Memory, to print any thing said by his Lordship.

Mr. *William Colepeper* only notes, That his Lordship was fully convinc'd of the Case, and that the Jury were so too; for, having withdrawn from the Bar, and considered the Matter, they brought in their Verdict as follows, and is now on the Record.

John Merriam, *Not Guilty.*

*Richard Britton, Not Guilty of the Conspiracy, nor of the Assault, but Guilty of the rest of the Indictment, in Manner and Form as is charg'd against him.*

*Nathaniel Denew, Not Guilty of the Conspiracy, but Guilty of the rest of the Indictment, in Manner and Form as is charg'd against him.*

Mr. *Colepeper* closes this Relation with the Particulars with which the Law clos'd it, viz. with the Sentence that was pass'd on the *Convicted*, the next Term after the Trial.

The Court being Sat, and all the Judges present, the Three Council for the Gentlemen, spoke in Mitigation of the Offence; and tho' just Animadversions might be made on the Matter, and Manner of their Discourse, yet as the Court was pleas'd to take no Notice of it, Mr. *William Colepeper* thinks it not necessary to make any Observations upon it.

Mr. *William Colepeper* having declin'd any Council, appear'd in his Gown at the Bar, and spoke in the Case himself, and after having open'd the Nature of the Crime, and said what he thought convenient to the Matter of Law, the Particulars of which he troubles not the Reader with, he concluded his Discourse with Words to this Effect.

My Lord, Had any of these Gentlemen challeng'd me really upon their own Account, however I might have acted, I should not have apply'd my self here for Redress; but Numbers are engaged against me, and yet the Quarrel is another Man's. My Lord, 'Tis within a few Days that a Gentleman of an ancient Family in our Country, has been hang'd for killing a Coachman; I am under such unhappy Circumstances, that some of those now Convicted before your Lordship, and others Indicted who have been engag'd in the villainous Machinations and Attempts against my Life, have been since advanc'd to Places of Honour and Profit.

Here my Lord Chief Justice interrupted Mr. *William Colepeper*, supposing him to reflect upon the Government.

After which, Mr. *William Colepeper* went on with due Submission to his Lordship.

My Lord, I intend no Reflection upon the Queen, or Government: Her Majesty is an excellent Person; but, like all Sovereigns, she is forced to hear with the Ears, and see with the Eyes, of others. The Great Man of Malice, improves the Interest he has to obtain Preferments for his Engines. My Lord, I am ready to prove, That he has employ'd some of these Instruments upon me, as well before a Demand of Satisfaction, as after an Agreement of giving it him in his own Method on the Coast of *Holland*. I hope your Lordship, and the rest of the Queen's Judges, will inform Her Majesty of Her Admiral, and that he will be made a severe Example of Her Justice: And, My Lord, I desire your Lordship, and all the Court, to take Notice of what I now say; Sir George Rook is the first Admiral of *England* that ever sent a Gentleman a Challenge, and after it was accepted, employ'd others to fight for him.

Here my Lord Chief Justice, and the other Judges, took Notice of Mr. *William Colepeper* again for these Expressions.

My

My Lord, said Mr. William Colepeper, going on, I am the most injur'd Gentleman of my Country: The Matter of my Discourse is true; perhaps the Manner may be more excusable, than justifiable: Mr. Denew, from a Captain, is made a Lieutenant-Colonel, and Mr. Knatchbul has a Place of 800 *l.* per Annum, both since their Crimes. 'Tis no wonder if the extreme Sense of my Wrong, should extort from me Expressions which your Lordship thinks do not become me. As your Lordship has reprehended me, I doubt not but you will also give just Judgment on the Assassins.

The Council for the Defendants then apprehending a great Fine, put Mr. William Colepeper in mind, that he had said at the Trial, Mr. Denew had but a small Estate.

Mr. William Colepeper own'd he had said so, and referr'd the Fine to the Pleasure of the Court.

Accordingly Sentence was past upon the Defendants as follows.

Nathaniel Denew Fin'd 200 Marks.

Richard Britton, 100 Pounds.

#### LIV. *The Proceedings before the LORDS of the Council in Scotland, against David Baillie, in Feb. 1703-4, for Defaming the Duke of Queensbury, and the Marquis of Anandale.*

THERE having been several Letters stop'd at the Post-House in *Edinburgh*, wrote in Cyphers, &c. which gave Alarm to the Ministers of a Plot intended, the Government caused David Baillie to be seized, who being brought before the Privy Council, the Lord Justice Clark ask'd him, *Whether any Person had offered to entice him, to depose against the Duke of Hamilton, the Duke of Athol, and his Brother the Earl of Cromerty, and others; as if they had been in a Plot against her Majesty.* To this Question Baillie had his Answer ready: *That the Duke of Queensbury, and Marquis of Anandale, had been treating with him, to depose against the Persons the Lord Justice Clark had named.*

The Board began to examine Baillie, *How, and When,* and upon what Occasion he had met with the Duke of Queensbury, and the Marquis of Anandale? All the Answer they could get of him, was, *That he had writ a Letter to the Duke of Hamilton, which contained all that he knew, or could say of what had been ask'd him.* He was told in Council, That he must declare what he had writ in that Letter; it not being enough for him, in a Case of that Nature, to refer to it in general Terms. And in the mean time, lest there might be Impressions, Informations, or Advices given him by the Party, which it was their Interest to do, he was committed close Prisoner, which is the usual Course the Privy Council takes, till the Examinations are over: But at the same time he was allowed Pen, Ink, and Paper, and desired to draw up in Writing all that he had to say, of what he pretended to have past between the Duke of Queensbury, the Marquis of Anandale, and him.

Instead of drawing up what he had to say in Writing, as desired by the Privy Council, he writ a Letter to the Earl of Eglinton, President of the Council *pro tempore*; acquainting him, That upon the whole Matter, he could say no more than what he had writ in that Letter, (meaning his, to the Duke of Hamilton,) and

presses that the Lord Justice Clark might shew the same to the Privy Council.\*

In the mean time, the Lords of the Privy Council sent two of their Members to the Duke of Hamilton, for the Letter Baillie had writ to him; which his Grace deliver'd to them, upon the Clerk of the Council returning him an attested Copy. Thereupon, Baillie was again call'd before the Privy Council, and ask'd, That since he had said in general, that the Duke of Queensbury, and the Marquis of Anandale, had endeavour'd to Bribe him to depose against certain Noble Persons; it was expected now, he should give the Board all the Particulars of that Transaction. Baillie still insisted, That he could make no Answer, except he had a Sight of his Letter to the Duke of Hamilton. The Queen's Advocate told him in Council, That by the Law he was obliged to answer to such Questions as were put to him by the Board; and that if the Letter he had writ to the Duke of Hamilton were true, he could not but remember the material Heads thereof; and if it were false, he ought not to continue in a Lye. The Queen's Advocate put him also in Mind, how unaccountable a Thing it was, That he should not remember what he had writ but Five Weeks before, which was the Date of his Letter to the Duke of Hamilton; when in that very Letter, he pretended to remember a great many Things which had happen'd to him Five Months before, which was the Time he had met with the Duke of Queensbury. The Advocate insisted further, That his Shuffling in this Matter, carried with it, all along, a great Probability, that the Letter he had writ to the Duke of Hamilton, had been dictated, or suggested to him; and he had since quite forgot his Lesson; whereas, if what he writ then had been true, (being a Thing in itself so extraordinary,) though he might possibly forget some minute Circumstances, it was impossible he could forget, in so short a Time, the Bulk and material Parts of it; Truth being

\* These, and the other Letters, are all inserted together at the Close of this Proceeding.



uniform; and Lies, for the most Part, defeating and confounding themselves.

*Baillie* continued deaf to all that the Lords of the Council could say to him; and they, to give a fair Handle to recollect his Memory, agreed to draw up some Interrogatories in Writing, which they deliver'd to him, desiring him to give in his Answers likewise in Writing, against the next Time he should be called before them.

Accordingly *Baillie*, when remanded back to Prison, falls to writing something like Answers to the Interrogatories which had been given him: But, upon second Thoughts, he breaks off abruptly; and to cover his Confusion and Irresolution, throws the Ink-Bottle upon the Paper, of Design to blot out what he had writ: Which Paper the Keeper of the Prison brought to the Council.

The Council seeing they could have nothing from him in Writing, after several Days Time given him to do it, call'd for him again; and desired him to answer the Interrogatories, *Viva voce*: And what Answers they were, will best appear, by placing the Interrogatories and the Answers in Order.

*Baillie's Interrogatories and Answers.*

1. *Interrogatory 1st.* What was the Rise, or Occasion of his being sent for by, or going to the Duke of *Queensbury*, and Marquis of *Anandale*, about the Plot? And, if it was any Discourse he had had with any of their Servants or Dependants; or that either he inform'd them, or they discour'd him on that Subject?

*Answer.* He can give no Answer thereto at all.

2. *Inter. 2d.* Who brought him to the Duke of *Queensbury*? And what was said to him by the Person, who desired him to come to his Grace? And what he answer'd? And about what Time this happen'd, as near as he can remember?

*Ans.* The Time was about the latter End of *July*, or the Beginning of *August*; and does not remember what *Mr. Stewart*, Servant to the Duke, who brought him to the Duke, said to him; and the Declarant answer'd, Nothing; but went away with him.

3. *Inter. 3d.* What the Duke of *Queensbury* said to him? What Account he gave of the Reason or Cause why he sent for him; or that any Person had recommended him? And who the Person was? And that he give Account of any other Circumstance, that might have been the Cause, or Occasion of the Duke's Enquiry?

*Ans.* Does not remember what the Duke of *Queensbury* said to him; nor can he answer at present, what was the Reason the Duke gave for sending for him: And says, That the Duke said, he was recommended to him; but he would not tell the Declarant, by whom.

4. *Inter. 4th.* What the Duke said to him? What he inform'd him of either as to Things, or Persons? And what he desired of him? And for what Cause? And what Arguments he used, to induce him to be free and plain?

*Ans.* He cannot recollect himself of what the Duke informed him, as to any other Person; and will not answer, at present, what the Duke desired of him: Nor will he answer, what Arguments the Duke used with him, to be free and plain with his Grace.

5. *Inter. 5th.* If the Duke named to him any Persons? And what the Persons were? And what the Duke desired to know of him concerning them? And what he answered about the said Persons, or any thing that was discour'd to him?

*Ans.* Yes: And what these Persons were, will not answer at present. What did the Duke desire of him concerning these Persons? He is not to answer that at this Time: What Answer he gave to the Duke, when he desired to know any thing of these Persons, &c. Will not answer that neither.

6. *Inter. 6th.* If the Duke, at parting, appointed him a new Time, or said he would send again for him? And to what Purpose? And, if he bid him enquire, or remember himself better, as to any Particular, and bring him an Account of it?

*Ans.* If the Duke, at parting, appointed a new Meeting with him? Says, No: But said he would send for him again. If the Duke did bid him to remember, or enquire, as to any Particulars; and bring him an Account of it? He cannot answer that just now.

7. *Inter. 7th.* When he met with the Duke the second Time? And what was the Occasion of it? And what further Discourse was betwixt them? And if any Persons were then named? Or he desired to witness against them; or to witness any Part of the Plot; or their Hand therein; or any Correspondence thereabouts? And what else pass'd in the Second Meeting?

*Ans.* At what Time he met with the Duke the Second Time, he cannot remember: And what was the Occasion of this Meeting with the Duke the Second Time, he cannot answer. As to that, What Discourse was betwixt them the Second Time; he cannot recapitulate every Particular that pass'd betwixt them just now: And if he named any Persons to him? Declares, Yes: And what these Persons were? He will not answer that. And if he desired him to witness against any Person? He will not answer that just now.

8. *Inter. 8th.* How long after was the Third, and then the Fourth Meetings? And if any thing occur'd in the mean time? And what was the Occasions of the said Meetings? And what pass'd therein, either as to Persons, or Things?

*Ans.* When was the Third or Fourth Meeting he had with the Duke? He did not mind: And what occasion'd the Third or Fourth Meeting with the Duke? He will not tell that at this Time: And what pass'd betwixt them at the Third or Fourth Meeting, either as to Persons, or Things? He is not to answer at this Time.

9. *Inter. 9th.* That you answer all the above Questions: As to the Occasion and Manner of your coming to the Marquis of *Anandale*? And what he said to, and demanded of you? And what you answered? And what Persons he named to you? And what he required of you, as to those Persons? And what Encouragement he promised you? And for what Cause?

*Ans.* Who brought him to the Marquis of *Anandale*? Answer'd, A Gentleman, whose Name is *Bane*, as he believes: And what the Marquis said, or ask'd of him? He will not answer at this Time: And what Persons the Marquis named to him? Answers, He is not to name them now. And what he did require of you, as

to



to these Persons? Answers, He cannot answer that just now: And what Encouragements he did promise him? Answer, He will not tell that at this Time.

10. *Inter. 10th.* What moved you to go to Duke Hamilton, or to write to him? Who advised you to do so? Who introduced you? And what said you to him; when you gave him the Writing? And if it was sign'd by you? And what the Writing did contain? And what you remember of the Contents thereof? And if you shew'd it to any other Person; and to whom? And what his Grace said to you about it? And if you was with him oftner than once, about this Matter? And if you acquainted any other therewith; and who they were? And what pass'd betwixt you and them upon this whole Subject?

*Ans.* He will answer no Questions as to the Duke of Hamilton, at this Time.

The Examination being over, the Lords of the Council found, That his refusing to answer the Interrogatories put to him, was against Law; and an high Contempt of the Board; and deserved a severe Punishment: And yet, notwithstanding of their just Detestation of the Man's Villany, their Moderation and Patience were such, that they did not proceed to Censure 'till they had call'd him before them once more. Then he was told, that if he continued to refuse answering to the Interrogatories, according to Law, they were obliged to inflict a Punishment adequate to his Crime. And the Queen's Advocate told him, he would prosecute him upon the Statute of Leefing-making; and common Grounds of the Law against Defamation and Calumny.

While Baillie stood thus mute to whatever was ask'd him in Council, the Duke of Hamilton gave in a Petition to the Board, representing, That he had inform'd the Lord Justice Clark of the Letter he had received from Baillie; and desired, that the Letter might be read to Baillie in Council; and that Baillie may either own, or deny it to be his Writing. On the Twenty-fourth of February, the Indictment was brought against him, in the Name of James Duke of Queensbury, Principal Secretary of State, William Marquis of Anandale, President of her Majesty's Council, and the Queen's Advocate for Her Majesty's Interest; to the following Purpose.

#### THE INDICTMENT.

**T**HAT where by the Laws of this, and all other well-govern'd Realms; The Inventing, Making, and Uttering, by Writ, or otherwise, of Lyes and Slanders, to the charging and defaming of any Person; and especially of Persons of the highest Quality, and greatest Trusts and Offices in the Kingdom; and in Matters of the highest Importance; not only touching their Honours, Lives, and Fortunes; but tending to misrepresent them to, and raise and endanger Discord betwixt Her Majesty and them: As also to raise Jealousies and Discords, and to occasion most dangerous and pernicious Contentions betwixt them and the other Peers, of the most eminent Quality within the Kingdom, are Crimes of a high Nature, and ought to be most severely punished, like as by the Acts of Parliament following, it is Statute and Ordained in Manner aftermention'd, viz. By the Act Ja. I. par. 2. cap. 43. That all Leefing-makers, and Tellers of

them, which may endanger Discord betwixt the King and his People, shall be challenged by them that Power has, and tyne Life and Goods to the King. And by Act Ja. Vth, par. 6. cap. 83. The aforesaid Act is Ratified and Approven, and Ordained to be put in Execution in all Points: As also the same is again ratified by several subsequent Acts of Parliament; such as Ja. VIth, par. 14. cap. 205. And Ja. VIth, par. 20. cap. 9. And lastly, by the Laws, both of this, and all other Realms, To Inform against, or Slander, or Accuse Persons as abominable Suborners and Solicitors of others, to Accuse, or Bear Witness against Persons of the highest and best Quality, of the most wicked and horrible Crimes and Treason, and Leese-making against the Queen and the Kingdom, is a Scandal and wicked Crime of the Highest Nature, and ought to be most severely punished. Nevertheless, it is of Verity, That David Baillie, Brother to Captain Robert Baillie, of Mannochall, and now Prisoner in the Tolboth of Edinburgh; shaking off all Regard to Truth, Honour, and Honesty, and to Her Majesty's Laws and Authority; and with a most pernicious and wicked Design, (as the Matter itself declares) to engender Discord betwixt Her Majesty and Her best Subjects: As also to raise Contentions, and Inflame and Incense them one against the other, by most abominable Lyes and Slanders; did upon one or other of the Days of December, 1703; and more particularly, upon the 22d Day of the said Month, take upon Hands, to write a most False, Scandalous, and Abominable Information, by way of Missive Letters, directed to his Grace the Duke of Hamilton: Which Letter, whereof the Substance above rehearsed, and a Copy herewith given, as a Part of this Libel, the Principal put in the Clerk of the Council's Hand, where David may freely see it, is a most gross, abominable, and defamatory Lye, tending to raise Discords, and the greatest Mischief that can be imagined. Like as the said David had the wicked Confidence, after having Written and Subscribed this Letter with his own Hand; as can be proven by comparing the same with other Writs under his Hand he gave in to the Committee of the Council, and are likewise in the Clerk of the Council's Hands, where he may see them, to give or send the same to the Duke of Hamilton, who received it. And further, when the said David acknowledged before the Committee of the Council, That he had given a written Information to the Lord Justice Clark, Informer, whom he knew, as he said, to be the Cause of his Imprisonment: And desired both the Lord Justice Clark to shew both his Informer, and communicate the Information, as David's Declaration to the Earl of Eglinton (whereof a Copy is also given to him, with this Libel, and the Principal in the Clerk's Hands for him to see,) bears: And the Justice Clark had named the Duke of Hamilton for his Informer: His Grace was pleased, when desired by Two of the said Committee, to exhibit and give up the said Principal Letter upon the Clerk's Receipt, on an attested Double. By all which, it is evident, That the aforesaid David Baillie is guilty, Act and Part, of most abominable Leefing-making, and most defamatory Libelling, in Writing and Vending the same, as said is: And that aggravate with all the Pernicious and Mischievous Consequences abovementioned. All which being Found and Proved before the Lords of Privy Council, the foresaid David Baillie ought to be severely Punished for the same, with the Pains of Law, at least; conform to the 4th Act of the last



*Session of this current Parliament, Entitled, Act against Leefing-makers; in his Person and Goods, to the Example and Terror of others; to commit the like in Time coming.*

Baillie was brought to his Trial upon this Indictment; and before he came to make his Defence, he judicially acknowledged and own'd his Letter to the Duke of Hamilton; which eased the Queen's Advocate of the Trouble of adducing Witnesses to prove his Hand-Writing.

*Baillie's Answers to the Indictment.*

1. It is answer'd for Mr. Baillie, *Primo*, That the Subject of the Complaint being a Matter of great Importance to him; and that the Letter which is the Ground thereof, making mention of a Plot; in relation to which, the Declarations and Affidavits of several Persons are taken at London, that may tend much to the clearing of this Matter; of which, at present, Mr. Baillie is not Master, but is in Hopes to recover them: Probably they will be sent down here to the Council. And that it seems, as yet; there is not a full Discovery made of the Plot; Therefore he humbly craves, that the Council may refer the said Complaint to the Parliament; or at least delay the Proceeding therein at present; that he may have a Time to recover the Declarations and Affidavits, that have been taken at London, and other Papers, that he is to make use of for his Defence; and until the Enquiry, as to the Plot, be fully concluded. And he humbly desires, That the Council may take the Point to their Consideration, in the first Place.

2. The Complaint being principally at the Instance of the Duke of Queensbury, and the Marquis of Anandale, and only with Concurrence of Her Majesty's Advocate, which goes of Course when a Process is rais'd at the Instance of particular Persons, *ad vindictum privatum*: And these Noble Lords not being present to insist in the Action, Process ought not to be sustain'd at their Instance. It being the known and uncontroverted Practice, That in all Criminal Actions, either intended before the Privy Council, or Lords of Justiciary, Processes are not sustain'd, unless the Prosecutor be present. And the Reason is evident: Because if he were present, the Defender might seek his Oath of Calumny, if he had just Reason to insist in the Action; and propound several Objections against the Libel, and verify them by the Prosecutor's Oath, that he might exclude the Pursuit. Of which Benefit the Defender is deprived, when the Pursuer is absent. And Her Majesty's Advocate hath no Interest to pursue this Action by himself; because it being *Actio Injuriarum*, which is but *privata Actio Legis code de injuriarum causa non publici iudicii, sed privato continet queritum*; and the Advocate, *ratione officii*, can only pursue Actions *ad vindictum publicum*, but not *ad vindictum privatum*.

3. The Complaint, in so far as it is founded upon the Laws and Acts of Parliament, against Leefing-makers, and Tellers of them, is no ways relevant to infer the Conclusion Libell'd; because, as to the 9th Act Par. 20. Jam. VI. it's only of such, who shall by Word, or Writ, *Deviser, utter, or publish any foresaid slanderous or reproachful Speeches, or Writs of the Estate, People, or Country of England, tending to the Remembrance of the ancient Grudges, born in Time of by-past*

Troubles: Which does not all concern this Case. And as to the other Acts of Parliament, they are only in relation to Leefing-makers to the King, of his Barons, Great Men, and Leiges; and of these that makes any Evil Information of the Barons and Leiges to the King; but does no way concern Leefing-making, or slandering of one Subject to another; as is clear from the Acts of Parliament mention'd in the Complaint.

4. If the Duke of Queensbury, and Marquis of Anandale, spoke the Things to Mr. Baillie in private, in relation to the Duke of Hamilton, and the other Noble Persons, which the Libel mention'd to be contain'd in the Letter; And if such Expressions, spoken of Subjects to a Subject, would infer the Crime of Leefing-making; then he behoved to reveal it, under the Pain of being guilty of Leefing-making himself: It being expressly provided by the 209. Act Par. 14 Ja. VI. anent Leefing-makers, and Authors of Slanders, which satisfies the former Laws about Leefing-making, and further Statutes, *That the Concealers, and not the Revealers, shall incur the like Pain and Punishment*. So that if any such thing had been said to Mr. Baillie, he being obliged to reveal it by the Law, it was no Crime; and consequently he cannot be liable to any Punishment; according to that Rule in Law, *Lib. 169. de Reg. Jul. Ejus vera nulla culpa est, cui parere necesse sit*.

5. As the Libel is not relevant to infer Leefing-making, for the Reasons abovemention'd, so it is not relevant to infer the Crime of Defamatory Libelling: Because the Letter was only written to the Duke of Hamilton, for private Information, *non animo injuriandi*; as appears from the very Beginning of the Letter; where it mentions, That the Noise which is every where made of a Plot, made him think it his Duty to inform the Duke of Hamilton of the Matter of Fact, contained in the Letter: And the said Letter was never published nor spread abroad by Mr. Baillie; so that it is evident, he had no Design to calumniate or injure these Noble Lords. And it is clear from the Common Law, and all Lawyers that have written on that Subject, *Actionem Injuriarum nunquam competere, nisi datus & animus injuriandi adsit; quia nec injuria absque dolo & animo injuriandi committitur*; which can never be said, when a Man makes Discovery only for private Information. And it's a Rule in Law, *That non factum, sed faciendi causam inspiciendum. Lege 39. fol. de Furtis*.

6. By the Law and Practice of all well-govern'd Nations, Informers of Crimes, whether there be Ground for the Information, or not, (for that depends upon the Expiscation, and Trial) ought to be encouraged; especially as to Things relating to the Public: So that when any Man offers to inform, or make Discoveries, he ought not to be punish'd as a Leefing-maker, or a Slanderer, albeit he cannot prove what he informs; for, ordinarily, the greatest of Crimes, such as Treason, Murder, Theft, or the like, are committed with the greatest Privacy, or Secrecy: And no Man commonly use to commit these Crimes publicly; because then the Probation would be clear against him. As for Instance, If any Man were inform'd of a Conspiracy against the Queen and Government, and he should discover it; as in Duty he is obliged, and would be guilty of Treason if he did not; it were most absurd to pretend, that he ought to be punished as a Leefing-maker, or Slanderer.



Slanderer, because he cannot prove what he inform'd. And the like in other Crimes, such as, If a Person design'd to murder, or assassinate another, and if that Design was communicated to a third Party, and he should acquaint the Person, against whom the Murder and Assassination were intended; it were against Sense to think, that the third Person should be liable as a Leefing-maker, or Slanderer, because he could not prove the Design: For if that were allow'd, no Person hereafter would ever discover any Crime, of which they have not clear Proof; and by this Means, the greatest Crimes should go unpunish'd, and undiscover'd. Whereas, if these Crimes had been timely discover'd by an Informer, they might either have been prevented, or the Committers thereof brought to condign Punishment.

7. Mr. Baillie being call'd to be the Queen's Evidence, and to give Information of what he knew in relation to the Plot that was so much talk'd of; if, when he was examin'd before the Committee of Council, he had declared all that was contain'd in the Letter, upon his Examination, it would have been no Crime; and he could not have been thereupon accused as a Leefing-maker, or Slanderer. But so it is, that the Letter written to the Duke of Hamilton, being produced before the Privy Council by Order of the Committee, it was equivalent, and the same upon the Matter, as if Mr. Baillie had made that Declaration before the Committee. And the Letter to the Earl of Eglington mentions, he desired the Information might be produced, which was not Verbal, but in Writing; and that it might be presented to the Council, that he might have an Opportunity to own it: And therefore, if he had made the aforesaid Declaration before the Committee of Privy Council, as it would have been no Crime, but his Duty, to have declared all he knew in that Matter, he being call'd as the Queen's Evidence; so, by the same Reason, he cannot be guilty of any Crime, the Letter being brought before the Council, and made publick by Order of the Committee, as said is.

8. That Mr. Baillie had no Design to calumniate these Noble Lords, may appear not only from a Letter written to him by Mr. Stuart, the Duke of Queensbury's Secretary, ready to be produced; and from what the Lord President of the Session was so just as to acknowledge in a Committee of Council, with relation to what Mr. Baillie had then signified to them, concerning the cypher'd Letters mention'd in his Letter to Duke Hamilton; and from such other circumstantial Adminicules as Mr. Baillie says he can adduce; but also from his Willingness to give his Oath of Calumny, That he had no Design to calumniate or injure these Noble Lords; which ought to be admitted, according to the Opinion of the most eminent Lawyers that have written on that Subject; and particularly Carprez, in his *Prædique No Criminal. Par. 2d. Quæst. 97. Quando & quibus casibus locus non sit actione Injuriarum. Numb. 5th and 6th.* Who is express, That *Ad probationem quod animum injuriandi quis non habuerit non requiruntur exactæ & plenæ probationes, sed sufficiunt Conjecturæ & præsumptiones. Et si Reus Conjecturæ Judicis Intentionem suam sufficienter probare nequit, nihilominus tamen constanter perseveret se verba animo injuriandi, non protulisse juramentum purgatorium desuper ipsi deferendum si juret ab actione injuriarum absolvendus est;* and

*Giales lib. 2d. Obser. 106.* And many other Lawyers by him there cited. And he mentions it to have been so decided in the Imperial Chamber. So if Mr. Baillie had been an Accuser, as he is but a private Informer; yet seeing he is willing to give his Oath of Calumny, That he had no Design to calumniate, or injure these Noble Lords, it ought to Liberate him from the Imputation of a Leefing-maker, and Slanderer, according to Law, and constant Practice in such Case.

In Respect whereof, &c.

To these Answers, it was reply'd by the Queen's Advocate, and the Council for the Duke of Queensbury, and the Marquis of Anandale, as follows:

That the First Two Answers are in the Nature of Dilators: And as to the First, it was reply'd, That the Ordinary Judicatures are competent and proper to determine all Actions and Suits, that can arise among the Subjects; and there lies no Actions in the First Instance, cognizable by the Parliament. And even in the Second Instance, upon Appeals, or Reviews, there lies no ordinary Remedy by raising Process before the Parliament; but Parties must first apply to the Parliament for a Warrant to raise Processes of Appeal, or Review. And the same thing might be alledged in all Civil and Criminal Actions, to delay Prosecutions, upon Pretence of remitting them to the Parliament. And in this Case, there was nothing but a private Process for a Defamation; For Mr. Baillie had not mention'd one Word of either Insurrection, or Invasion; albeit, the Warrant had been obtained from the Queen, under the specious Notion that he was capable of making great Discoveries of the ill Designs, in relation to the Insurrection and Invasion. But his Discoveries were calculated for private Quarrels, and not for publick Use; and by the Law and Custom of Scotland, the Privy Council is most competent to cognize, and give Redress in such Matters.

It was reply'd to the Second; That no Law, nor fixed Custom, had made it necessary, that Complainers should be personally present: And, in some Cases, it had been found, that it was not necessary. And the Duke of Queensbury, and Marquis of Anandale, being necessarily absent upon Her Majesty's Call for the Publick Service, it were unreasonable not to allow them to vindicate their Honour and Reputation. Although the Queen's Advocate cannot pursue in the Name of private Parties, without their Consent and Allowance; yet, in this Case, both the Duke of Queensbury, and Marquis of Anandale, sent down their Declarations, in relation to this Matter: In which they do insist, that it may be tried and punish'd; which is more than sufficient to instruct their Warrants and Concurrence. And it is a frivolous Pretence, That if they had been present, Mr. Baillie might have ask'd their Oaths of Calumny; that is, if they had Reason to deny what was contain'd in his Letter, or to insist in this Process. For, besides the Absurdities and Improbabilities in the Letter, Mr. Baillie never pretended to have their Oaths of Calumny; nor does the Law allow any Oath of Calumny to be ask'd, in relation to a Crime, as Bribery and Subornation of Witnesses; *Nam nemo tenetur jurare in suam turpitudinem.* So that there is not the least Reason, to demurr upon the Dilators.



As to the First and Second Peremptors, which are stated the Third and Fourth in the Defence; it is reply'd, That the Complaint is founded upon Two distinct and separate Grounds, *viz.* Leefing-making, which is generally understood to relate to the Sovereign, the Estates of Parliament, the Great Men and Ministers in the Government. So this Complaint from the Duke of *Queensbury*, and Marquis of *Anandale*, is well founded on these Laws: And albeit, by the Act in the last Session of Parliament, the Laws, in relation to Leefing-making, being too general, were restricted from Treason, or from Punishments inferring the Loss of Life or Limb: Yet it is expressly declared, That the Laws do stand good, and the Crimes are punishable by an arbitrary Punishment; that is, Fine, Prison, Pillory, and Banishment.

The other Ground upon which the Complaint is founded, is competent in the Common Law to every Subject against Defamation and Calumny. And in this Case, the Quality of the Persons, or the Dignity of their Offices, are only brought in as Aggravations of the Crime: And whereas it is pretended, that by the Laws against Slanders and Leefing-making, the Hearers are bound to reveal, and are punishable if they conceal; that does only relate to Leefing-making and Slander on the Sovereign, and the Estates of Parliament; and while Leefing-making was Treason, and consequently the concealing of it was Treason. But now, when it is neither Treason, nor infers a Capital Punishment, there is no Danger of the concealing, especially when it relates only to Subjects and private Persons. And if the Law had obliged Mr. *Baillie* to have reveal'd, yet that could be only to the Government; and to have reveal'd to a particular private Person could never have excused or secured Mr. *Baillie*, if he had been oblig'd to reveal; as indeed he was not.

It is replied to the Fifth, That in Law and Reason, an Information given to a private Party, containing a Slander and Defamation, is always taken in *Malam partem* & *ex animo Injuriandi*. Whereas, when Persons inform a Government, make Oaths, or Declarations, being call'd there-to by Authority, it is always taken in *Bonam partem*, and believed to be the Mind and Sense of the Informer, who is in his Duty, or by Force of Law obliged to make a Declaration or Discovery.

It is reply'd to the 6th, That it is indeed the Interest of the Publick, that Persons in their Duty declaring Truth, revealing, or discovering Crimes, should be safe, though they are not able to prove what they say; because most Crimes are perpetrated privately: But this holds only when Discoveries are made to the Government, when they be forced to declare by Interrogatories, or Questions put to them by Authority; in which Case, every Subject is bound to answer; and so it is no officious, or ultronious Act. And therefore the Declaration, or Discovery, is presumed to be Dutiful, and to be True; and except such Declarations and Testimonies were re-argued in a Process of Perjury, and proved to be false, the Parties cannot be quarrell'd for what they have discovered to a Government, or declared by Force of Law: But where Informations are given to private Persons ultroniously and officiously, especially to the Persons concerned, to endanger Strife; there the Informer is upon his

Hazard, either to make Good what he has said, or to be liable in Punishment as a Calumniator; because there was neither Duty, nor Necessity, that obliged him to inform; and if he has done it voluntarily and petulantly, he is obliged either to make it Good, or suffer for it.

It is replied to the 7th, That by the former Answer it is plain, That *Baillie* is not in the Case of the Queen's Evidence; as to this Letter, because he had voluntarily sign'd and delivered the same to a private Party, a Month before the Queen's Order to apprehend him.

It was replied to the last, Let Mr. *Baillie* say now what he pleases, That what he inform'd was not *ex animo Calumniandi*, but only to inform the Duke of *Hamilton*, *sine fraude* & *dolo*, cannot pass; because in private Informations, *dolus* & *culpa semper presumitur*, If the Informer cannot prove, or make Good what he had said; and it is true, That Calumny being a Crime, cannot be committed *sine dolo*, or ill Design: But the Law says, *lata culpa equiparatur dolo*; Therefore if that Charity could be given to *Baillie*, That he had no ill Design, and was only imposed upon, or befooled; yet that Folly is so gross, that in Law and Reason it must be constructed equal to an ill Design; for if any Body will reflect upon the Letter itself; they will find it stuff'd with *Virulence* and *Malice*.

Upon a full Hearing of both Sides, there being *Thirty-one Privy Counsellors present*, *Baillie* was found Guilty of Defamation; declared Infamous, and banish'd the Kingdom for Life; without one contradictory Vote; and Sentenc'd to stand in the Pillory by a Majority.

June 21, 1704. A Petition was read in the Parliament of Scotland, of *David Baillie*, Prisoner in the Castle of *Sterling*, by Sentence of the Council, for accusing the Duke of *Queensbury* and the Marquis of *Anandale*, of a Design to suborn him against the Duke of *Hamilton*, the Duke of *Atbol*, and others, in relation to the Plot, praying to be set at Liberty, which was granted, upon his finding Bail, to appear before the Parliament when call'd.

The several LETTERS relating to *Baillie* and the Plot, mentioned in the foregoing Proceeding.

Letter to the Dutches of *Queensbury*.

Madam, May it please your Grace,

“LAST Night I was in a Place, where the Company was talking of some Letters that were fallen into his Grace my Lord Commissioner's Hands, that no Body could read almost: But a Gentleman, may it please your Grace, immediately replied, I am sure I know one that can. Madam, said he to me, he is a Kinsman of yours. I asked him who it was? and he whispered me, Mr. *David Baillie*, to whom I suppose, (continued he,) the Letters was for; for all their being directed to *David Lindsay*: Nay, Sir, said I, I can hardly think that, for many Reasons, and particularly, because I think Mr. *Baillie* has more Wit than to be brought into a Plot: Yes, Madam, said he, I agree with you, he has a great deal of Wit; and that is not all, for he is very sober; he never was drunk in his Life-time; and that is a Quality makes any Person

" Person capable both to manage and conceal his  
 " Business: And I do assure you, Madam, said  
 " he to me, I do think there is no Person so  
 " fit to carry on a close Design, as Mr. *Baillie*;  
 " for though I know there has been nothing  
 " done this Ten Years or more, from the other  
 " Side, but what he has been necessary, or privy  
 " to; yet I could never, notwithstanding of my  
 " Religion, and Intimacy with him, discover  
 " whether he was so engaged or not, but that  
 " I knew it perfectly well from another that  
 " is concern'd, that I hope to see in a Week or  
 " two; then I shall know the Meaning of these  
 " Letters. Soon after that, May it please your  
 " Grace, I went to call for Mr. *Baillie*, where,  
 " near his Door, upon the Stairs, I met, or ra-  
 " ther found standing, a Black, who I have seen  
 " in a Red-Coat Laced; but he was then in a  
 " dark Gray. I went to the Door, knocked  
 " and went in, and enquired for Mr. *Baillie*;  
 " the Maid told me, He was not within; then  
 " said I, I will go into his Chamber, and sit  
 " down and cool my self; and so was going,  
 " but the Maid stopped me, and prayed me to  
 " walk in to her Mistress; who told me, I  
 " must excuse the Maid; for to tell me the  
 " Truth, Mr. *Baillie* was within, and a Gentle-  
 " man with him; but had given Orders to say  
 " he was out, because he was to be busy; so  
 " prayed me to sit down there a little, which I  
 " did; and after some Time, what I had heard,  
 " which was a great deal more than what was  
 " fit to say here, because it mentioned the Per-  
 " son, who I fancy the Black I see upon the  
 " Stairs, belongs to, gave me the Curiosity to  
 " ask, If they knew who was with Mr. *Baillie*?  
 " They said, No. Dear me, said I, how fright-  
 " ed was I just now, when I met the Black up-  
 " on the Stairs! What, does he belong to the  
 " Gentleman that is with Mr. *Baillie*? I do  
 " not know, said the Mistress, but I see a Black  
 " came in to Mr. *Baillie* this Afternoon; and it  
 " is very like he came to see if he was within;  
 " for I heard Mr. *Baillie* say, as he went out,  
 " Give my Service, and I will wait my self until  
 " he comes; and so he walked up and down the  
 " Entry for above Half an Hour, and then the  
 " Gentleman that is still with him, knocked, and  
 " Mr. *Baillie* let him in himself; and as soon as  
 " he had carried him in, he came out and said,  
 " I am not within to any Body; this is all I  
 " know, said she: So I was obliged to go home  
 " without seeing of him. But I could not be at  
 " Ease till I see him, and so I found him this  
 " Morning writing, but I know not what; yet  
 " it served to increase my Suspicion, for after  
 " he had done writing, he put what he had  
 " wrote into a Play-Book, and roll'd it up hard,  
 " and tyed it with a Pack-thread, and sealed  
 " it; and in less than Half an Hour, which was  
 " Ten o'Clock, there came a Man who I have  
 " seen also in a Red Livery Laced, with Good  
 " Morrow, Sir, I come for *Cowley*, if you think  
 " fit to send him. No, answered Mr. *Baillie*,  
 " I cannot spare him: But there is a Play will  
 " divert as well; and they may either keep it,  
 " return, or burn it as they please; so away  
 " went the Man, who was in black; and I said,  
 " What Man is this? But Mr. *Baillie* waved  
 " answering, and talked of the Weather, and  
 " indifferent Things; so I had no other Way  
 " left to satisfy my Curiosity, but to call out,  
 " Vol. VIII.

" Nay, now I believe all I heard Yesterday of  
 " you, Mr. *Baillie*: Pray, what was that, said  
 " he? Why, That you are a Plotter; and so I  
 " told him all, and what Suspicion his being  
 " shut up with him I fancied the Black belonged  
 " to; and his sending away Writings under the  
 " Covert of that Play: He only smiled, and  
 " said, I think it is certain, there will no Body  
 " that knows me, believe me a Plotter; for I  
 " have not a Head for that, and I know nothing  
 " of any Letters at all, nor of any Body that  
 " would write to me, that need to do it ob-  
 " scurely: But if they did, I should not trouble  
 " any Body to explain them; neither, if I were  
 " capable, should I give my self the Pain to  
 " unlock any other Persons Letters: So I do not  
 " see how it concerns me at all; for that Gen-  
 " man's Weakness that was pleased to give  
 " me such a good Character, as he believed, I  
 " pity him for it if he designed it kindly; if  
 " otherwise, I despise the Impertinency of it,  
 " as being altogether groundless, as your Sus-  
 " picion is, Madam, said he: And no doubt,  
 " whatever's contain'd in those Letters, is very  
 " well known before this Time; for I believe it  
 " is only a Trick to amuse the People with an  
 " Apprehension of a Popish Successor, that  
 " they may, with the more Ease, bring about  
 " the Design of having *Hannover* declared here,  
 " as in *England*. And this, I suppose, is Mr.  
 " *Scott's* Plot, and his Father-in-Law, the  
 " Queen's Advocate, and the rest of our Courti-  
 " ers, excepting his Grace the Commissioner.  
 " Nay, it is well, said I, you except him. Yes,  
 " Madam, said he, I except him, not because  
 " he is Commissioner; but because he is the  
 " best, if not the only good Man amongst them.  
 " For tho' I am no Courtier, I go sometimes to  
 " see them Sup; but the Dutchess looks always  
 " so hard at me, I believe I shall go no more.  
 " At first when I observed her Grace looking so  
 " at me, I thought it might be because of my  
 " Cloaths, or my Stockings, being sometimes  
 " Pink-colour'd, or blue, which are too youth-  
 " ful for me; but that I find is not the Thing:  
 " For the last time I was there, her Grace still  
 " looked, tho' I think there was nothing re-  
 " markable, or very monstrous about me. But  
 " I am apt to imagine his Grace, the Commis-  
 " sioner, knows me again; which I wonder,  
 " considering he never saw me but once, and  
 " that was at Night, and I was in my own  
 " Hair; and so had shewed me to the Dutch-  
 " ess; and she wonders I come there. Why,  
 " said I, should she wonder at that? Nay, that  
 " I cannot tell, said he; except it be, that  
 " Somebody has done me the Favour, to let  
 " the Duke of *Queensbury* know, or at least be-  
 " lieve, I could do him some manner of Service  
 " last Winter, while I was at *London*: And his  
 " Grace was pleased to send for me by Mr. *Stew-  
 art*. But tho' I imagined what it was, yet I  
 " seemed ignorant, because I could not have  
 " done what would have been of Service to his  
 " Grace, without injuring others; tho' for what  
 " I know, I might as well have done it as not.  
 " Nay, said I, if it be so, Why do you not do  
 " it still? No; that Time, says he, is past:  
 " Not but that I know what would be of more  
 " Service to his Grace than that would have  
 " been, or any thing else that can happen to  
 " him. Pray, for God's sake, tell me what that  
 " is,



" is, said I. No, no, Madam! Said he, have a  
 " Care of that: It is not for you, or any Wo-  
 " man to know that; without it were the Queen;  
 " nor any Man, except it were the Queen's  
 " Commissioner. And if he knew, his Enemies,  
 " I think, would have a cold Coal to blow at.  
 " But, Madam, we have said enough of this:  
 " So, and it please your Grace, I stay'd some  
 " Time longer; then bid adieu; and was no  
 " sooner got home, but I undertook to give  
 " your Grace this Trouble; which I have  
 " done with all the Exactness my Memory  
 " would serve me, and which I thought my  
 " self oblig'd from Two Powerful Reasons.  
 " First, I have the Honour to be of your Grace's  
 " Country; and the next, I have received many  
 " extraordinary Civilities from your Grace's  
 " most Noble and Incomparable Brother, my  
 " Lord of *Burlington*: And therefore if your  
 " Grace thinks fit to take Notice of this,  
 " I hope you will order it so, that Mr. *Baillie*  
 " may not suspect me, for having given your  
 " Grace any Intelligence; for that might  
 " prove of very ill Consequence to me, being  
 " a Stranger, if your Grace should intimate  
 " this to any Person but the Commissioner,  
 " who, no doubt, will certainly find it turn  
 " to account, to gain Mr. *Baillie*. He lodges  
 " at Mrs. *Arbutnot's*, in *Kennedy's* Clofe, near  
 " the *Tronne*.

*May it please your Grace,*

*I am your Grace's, &c.*

About the 11th of *October*, the Day before  
 the Marquis of *Anandale* left *Scotland*, to attend  
 Her Majesty upon a special Call, there was a Let-  
 ter directed to him, writ in the same Hand with  
 that to the Dutches of *Queensbury*, Signed *Char-*  
*lotte Constable*, in the following Words, viz.

LETTER to the Marquis of *Anandale*.

*My Lord,*

" THE Desire I have to serve your Lord-  
 " ship, puts me upon giving your Lord-  
 " ship this Trouble; which is, in few Words,  
 " to let you know, my Lord, That one Mr.  
 " *Baillie* has it now in his Power to do an  
 " extraordinary Piece of Service, to the Advan-  
 " tage of the QUEEN's Affairs, and your  
 " Lordship's Interests, which to me seems in-  
 " separable: Therefore do not slight the Ad-  
 " vice of her that loves you, and wishes your  
 " Prosperity and Glory; but send for Mr. *Baillie*,  
 " who is truly, to do him Justice, a Person of  
 " great Merit and clear Sense, and gain him to  
 " be yours. And tho' I must not be particu-  
 " lar at this Time, my Lord, yet I will tell  
 " you that he is able to advise you of what  
 " will put the Queen's Enemies and your own  
 " into your Power, and for ever defeat their  
 " Designs. I think I need say no more, the  
 " Queens Service and your own Interest, are  
 " sufficient Persuatives to Diligence and Care;  
 " only I am to beg of you, my Lord, not  
 " to say any Thing of this Intimation that I  
 " have given your Lordship, to any Person;  
 " for I suppose you need not want a Pretence  
 " to send for Mr. *Baillie* to come to speak to  
 " you; and I have as little Reason to doubt

" but your Lordship, if he comes to you, will  
 " take all the kind and friendly Ways to gain  
 " the Point: To make which the more easy,  
 " you may tell him, You know very well, that  
 " at this very Time, there is Designs carrying  
 " on both in *England* and *Ireland*, as well as in  
 " *Scotland*: And though you do not know all  
 " the Particulars, and Persons concerned, yet  
 " you know that he does; and that is not all,  
 " for your Lordship may intimate that you  
 " know that my Lord *D—d*, the Night be-  
 " fore he went out of Town, came to Mr. *Baillie's*  
 " Chamber about Ten o'Clock at Night, and  
 " staid till Eleven; at which Hour came a cer-  
 " tain Duke, and a little after, another Titular  
 " or Pretended Duke in Women's Cloaths, and  
 " several others, to the Number of eleven Per-  
 " sons; and staid till about Four o'Clock in  
 " the Morning. This Hint is sufficient to your  
 " Lordship, for you must manage all with Se-  
 " crecy and Caution, and give no Alarm by  
 " Unkindness, or Violence. Now, my Lord,  
 " I am to tell your Lordship, Mr. *Baillie* lodges  
 " the very first Clofe above the Sign of the *Sun*,  
 " on the South-side of the Way, at one Mr.  
 " *Killies*. I am, my Lord, your Lordship's un-  
 " known, but most loving and hearty Well-  
 " wisher, and most humble Servant,

*Charlotte Constable.*

The Letter directed thus: *To the Right Ho-*  
*nourable the Marquis of Anandale, Lord President*  
*of Her Majesty's Privy Council.* And in a Cover  
 directed to Mr. *Campbel*, at the Marquis of *Anan-*  
*dale's*. And wrote within, *Sir, Deliver the in-*  
*closed immediately to your Lord.*

Upon the 22d of *December*, *Baillie*, after he  
 had been at the Lord *Belhaven's*, came to the  
 Duke of *Hamilton's* Lodgings, where he de-  
 livered a Signed Declaration, by way of Letter  
 to his Grace, in the following Words:

*Edinburgh, Decemb. 22d, 1705.*

*May it please your Grace,*

" THE Noise that is every where of a Plot,  
 " makes me think it my Duty to inform  
 " your Grace what happened to me, during the  
 " last Session of Parliament; which, in a few  
 " Words, was this, The Duke of *Queensbury*,  
 " then Commissioner, sent for me, (but by  
 " whose Instigation, I was never able to learn,)   
 " and after a great Profession of Kindness, and  
 " Declaration of Readiness to do me Service,  
 " his Grace did alledge, That he had it from  
 " very good Hands, that there was Designs car-  
 " rying on in *Scotland*, *England*, and *Ireland*, to  
 " subvert the Present Government, and to re-  
 " store the Prince of *Wales*; and as he alledg'd,  
 " I was not Ignorant of them; so that he hoped  
 " and entreated me for his Sake, as well as my  
 " own, and above all, for the Preservation of  
 " Her Majesty's Person and Government, to  
 " let him know the whole Matter. To which  
 " Demands, I was obliged to answer, though not  
 " without Surprise, and extreme Confusion:  
 " Yet Truth, which I hope shall ever guide me,  
 " obliged me to declare my own Innocence, and  
 " my Ignorance of all such wicked Enterprizes.  
 " But

“ But the Duke of *Queensbury* still insisting, I  
 “ was obliged to offer to withdraw; but when  
 “ I was going, he called me back from the Door,  
 “ and bid me consider his Kindness to me, for  
 “ he had now not only offered me his Service,  
 “ but his Personal Friendship; and desired me  
 “ to think well what I did, for he would not leave  
 “ me so; which indeed I found to my no small  
 “ Mortification, for a few Days after, he sent  
 “ Mr. *Stewart*, the same Gentleman that he had  
 “ employed to bring me to him before; and Mr.  
 “ *Stewart* having left the Room, the Duke went  
 “ to his Cabinet, and as he was opening it, told  
 “ me, He would shew me a Rarity; but having  
 “ searched some of the Drawers of his Cabinet,  
 “ he seemed as if he had been surprized, and said,  
 “ he believed he had left what he look’d for,  
 “ with his Wife, and had forgot; so he went to  
 “ the Door, called, came back again, and sat  
 “ down, and would needs, whether it was Reason  
 “ or not, force me to do the like: And then  
 “ he told me, He had a mind to shew me three  
 “ Letters, that were carried by the Mistake of  
 “ the Postman, to a wrong Person, that it seems  
 “ was of the same Name; that no doubt they  
 “ contained Matters of dangerous Consequence  
 “ against the Government: Just as he had said  
 “ that, Mr. *Brown*, that is his *Valet de Chambre*,  
 “ came and whispered him, and when he was  
 “ gone, the Duke told me, That the Dutcheffs  
 “ had let the President of the Sessions carry away  
 “ the Letters; but however, said he, I know very  
 “ well, you know what is in them, and more  
 “ too. Which when I replied, It was impossible,  
 “ having never seen them: He smiled, and  
 “ said, I will warrant you do not know nothing  
 “ of my Lord Number *Three*, or *Seven*, nor  
 “ *Phirlosbeus*: Not indeed, my Lord, I answered,  
 “ I know nothing of what your Grace means.  
 “ Then you do not know Duke *Hamilton*, my  
 “ Lord of *Atbol*, nor the Chancellor; nor never  
 “ so much as heard of my Lord *Drummond*, *Bel-*  
 “ *baven*, nor my Lord *Tarbat*, nor *Blantyre*:  
 “ Well, well, said he, Mr. *Baillie* you will say  
 “ nothing to me, but you see I am not so ignorant,  
 “ as you take me to be, for I knew very  
 “ well who are Pensioners to *France*, and who  
 “ are not; Nay, I know my Lord of *Atbol*,  
 “ and your Convert, the Chancellor, is amongst  
 “ the first of them now, tho’ may be they have  
 “ not been so long as your great Duke of *Ham-*  
 “ *ilton*, *Mareschal*, and *Belbaven*, for I know the  
 “ Duke of *Hamilton* has been so these many Years.  
 “ But when I again, and again asserted the Truth,  
 “ That I knew nothing of all that, and that if  
 “ your Grace, and all the rest of the Noblemen  
 “ named, were as ignorant, and as innocent  
 “ as I, certainly they were misrepresented to his  
 “ Grace, for they were generally believed to  
 “ be the best Men of the Nation: At which he  
 “ cried out mightily, and told a great many  
 “ wicked Things that had been done by your  
 “ Grace, as he pretended: But I will not now  
 “ trouble your Grace with a Relation of them  
 “ at this Time, designing, if it please God I  
 “ live, to publish the whole Conference at large,  
 “ both to satisfy my Conscience, and Country,  
 “ of the Duke of *Queensbury*’s Practices to gain  
 “ me to make the most horrid of all Lyes, and  
 “ the most dangerous; for he offered me great  
 “ Preferments, and Money, even what I pleased,  
 “ if I would but, as he termed it, tell the Queen,

“ what he would tell me; for it seems, I would  
 “ force him to be plain with me, because I would  
 “ not understand. But if I would go to the  
 “ Queen, and tell her Majesty, That Duke *Ham-*  
 “ *ilton*, *Atbol*, the Chancellor, and the above-  
 “ named Lords, are actually Pensioners to *France*,  
 “ and that they had a Publick Bank, and *Man-*  
 “ *agers* for buying up Arms, and other Stores of  
 “ War; then he would not only promise, but  
 “ perform. And if I could undertake this, then  
 “ he would immediately let me see a List of all  
 “ those he would have brought into the Plot,  
 “ and he would swear never to let any Person  
 “ know, but that it was a real Plot: And that  
 “ I had made the Discovery first to him; and  
 “ that he had sent me to the Queen: I say, pro-  
 “ vided I would say after him, and swear to it.  
 “ Your Grace may imagine, I was not a little  
 “ put to it for an Answer, and, as I remember,  
 “ it was this: That I thought his Grace’s Ad-  
 “ vices were certainly the best, where there was  
 “ a real Plot: But for a Person to swear a Lye  
 “ to the Queen, upon Persons that were altoge-  
 “ ther innocent, so far as I knew, it was what I  
 “ hope, that I shall never think of, but with  
 “ Trembling, and Detestation: But if any thing  
 “ occurred to me, the Discovery of which might  
 “ be a Service to the Queen, or my Country,  
 “ none would be readier than my self. This, may  
 “ it please your Grace, I thought fit to adver-  
 “ tise you of, being a short Abridgment of what  
 “ past ’twixt the Duke of *Queensbury* and me.  
 “ But it seems to me, he having failed in his  
 “ Attempt on my Integrity, employ’d the Mar-  
 “ quis of *Anandale*, on the same Design; who  
 “ did, to do him Justice, use me after another  
 “ manner. For having got me into his Clutches,  
 “ if I may speak so; for he sent for me the  
 “ very Day before he went to *London*, and would  
 “ not part with me, he said, ’till I went to *Lon-*  
 “ *don* with him, to let the Queen know how  
 “ well she was served by the Duke of *Atbol*,  
 “ who, he knew, had been at my Chambers  
 “ with your Grace, in Women’s Cloaths, and  
 “ that there came there, all that I named before,  
 “ and my Lord *Drummond*, and *Jerviswood*, and  
 “ several others, to the Number of Eighteen:  
 “ And that there they treated of bringing home  
 “ the *Prince of Wales*, and all that was necessa-  
 “ ry for such an Enterprize. To which, when  
 “ I answered, there was never any such Meet-  
 “ ing, he said, we should understand one another  
 “ better, when we got into *English* Ground:  
 “ For he thought it was unnecessary to tell me,  
 “ That I must not only say there was such a  
 “ Meeting, but swear it; which if I did, I would  
 “ have it in my Power to make my self for ever,  
 “ and might be an *Officer of State*, before I left  
 “ *London* again. But when I reply’d, that I was  
 “ not fond of swearing a Lye, and that it was  
 “ impossible for me, to bring my self to think of  
 “ such a thing: And that I would not, tho’ I  
 “ had never such an Inclination to go to *London*,  
 “ to go on that Score, therefore I hop’d he  
 “ would excuse me. But he was so far from that,  
 “ he flew in a Passion, and swore he would be  
 “ revenged. And when he see that did not pre-  
 “ vail neither, he fell a Coaxing me again; but  
 “ I thank God, he did not succeed that Way nei-  
 “ ther. Yet I told him at parting, I was his hum-  
 “ ble Servant; which I really would have been,  
 “ so far as never to have laid open this most abo-  
 “ minable



"minable Villany; tho' sure nothing could be more provoking, than to be sent for by People, I had never had Converse with, nor Obligation to, nor Dependence upon: And there to be flattered with great Rewards, if I would become a Villain, the most perjured of all Lyars; but threatened to Destruction, if I retain'd my Integrity, and Loyalty. For surely, let that Set of Men pretend what they will, nothing can be more Disloyal, than thus to abuse the best of Queens, and to endanger the best of Subjects, and indeed the only sound Part of the Nation: And who, if there were any thing to be attempted, would certainly stand by the Queen, and Country, when such Men as the Duke of Queensbury, and Marquis of Anandale, would desert both. May it please your Grace, I was saying before, I would never said any thing of this, had not the Noise of a Plot met me every where, and I confess I had no longer Patience. And I never think of my Silence, but I am ready to die with the Apprehensions of the Dangers, that the Duke of Atbol, and a great many other Persons are fallen into; which perhaps I might in some measure prevented, if I had sooner given your Grace the Truth of this, that you might have warned the Duke of the Designs of his Enemies, which I hope you will do now, without further Delay. May it please your Grace, I am Your Grace's most humble Servant in all Sincerity and Truth.

"*Sic Subscribitur,*

David Baillie.

The LETTER to the Earl of Eglington,  
President of the Council, pro Tempore.

My Lord,

FROM what my Lord Justice Clark said, I find that I owe my present Misfortune to him; and that it was his Lordship, that procured my Confinement, upon the Information given him, by whom I know not: But he may please to know, that I gave no Information to any Person, in relation to that Business that happened to me, from his Grace the Duke of Queensbury, or my Lord Marquis of Anandale conditionally: for I left it to them whom I informed, to make what Use they pleased of my Information. So consequently my Lord Justice Clark may, without the least Scruple, produce his Informer, and He, my Information, which was not Verbal, but in Writing. Therefore, my Lord, if you please, this is what I think most Honourable for me; because, as I understand my Lord Justice Clark, it was three Weeks, since he had Notice of this Business, but that he delayed apprehending me, because the Person that spoke of me to him, did not think it fit to attempt it, 'till there was a Warrant to seize me, because I was a Gentleman. Now, my Lord, I think what he was pleased to add, would not have given me the Assurance, to have assumed that Title to my self, for it is a very glorious One, and it shall be one of the chief Studies of my Life to maintain it. And therefore, my Lord, without Prejudice, or Difobligation, or Obligation, to either the Duke of Queensbury, or the Marquis of Anandale, or my Lord Justice Clark: I do plainly say, that whatever Information I gave on this Affair, was in Writing, and without either Caution, or Security, for my own Safety;

which, I think, will by my own Innocence be best secured to me, not but that I hope all Justice from the Board, where my Lord Eglington sits, and so do most earnestly beg, that your Lordship will be pleased, to desire my Lord Justice Clark, to show the Information I have already given; which, I think, will abundantly show how little I regard the Ease of my Person, when it comes in Competition with that of my Conscience, for I will always speak Truth, through the Assistance of God, whatever be the Consequence. Now, my Lord, I am really so ill, that I am scarce able to say any thing of what the Earl of Glasgow seems to lay some Strefs upon; my not owning readily enough, (as he thinks,) the Signification of every Word in Mr. Steel's Letter: I will only say this, That Mr. Steel, and I, have conversed long, and very frequently, and with great Freedom, but without any other Design, than to divert and amuse, with little Jest of good Humour: For sometimes Hours to one another, would be all Raillery, after our manner; some all Tenderness; some all Scandal; some all Gallantry; some all Business; some all Devotion; and some all together, and some all Commendations, and Services, to the Lord knows who; to the Acquainted, and Unacquainted. But I cannot think this, or, that if Mr. Steel had named all the People of both Nations that were at London, when I was there, and desired me to give his Service to them all, if I see them; that there is any thing in this, to oblige me to deny it, for I think Mr. Steel may very freely own any thing he ever wrote to me in his Life, and I am sure, I will own any Letter I ever wrote to Mr. Steel. My Lord, excuse this, I am sensible I have strayed from your Lordship's Orders, but the Reason why I did so, was, because my Lord Justice Clark did seem to say as much, as if it were to secure his Informer from the Suspicion of a false Accuser, that I was taken into Custody, fearing I might either deny, or go out of the Way. As to the denying Truth, I think no human Force could induce me to do that: And as for my going out of the Way, I had no Inclination, for if I had, I am sure I have had Time and Opportunity enough these six Weeks to have done that: For upon the very first breaking out of the Plot, at least, so as to be Publick here, I sent a written Account of what had happened, which I am sure is Truth, as to the Matter of Fact, which I am so far from denying, that I desire your Lordship may procure my Lord Justice Clark to present the Paper to the Council, if you think fit; tho' I do say it was not to his Lordship that I sent it; yet it is certain it has been communicated to him; and I desire to have an Opportunity to own it, as well to free the Person that communicated it to the Justice Clark from the Suspicion of a malicious, or false Accuser, as to satisfy your Lordship. To do which, and to obtain my Liberty again, I will do every thing becoming a Christian and a Gentleman, a Prisoner but no Plotter. My Lord, I beg leave to say, that I am,

Edinburgh, Tolbooth,  
Feb. 8. 1704.

To the Right Honourable  
the Earl of Eglington.

"most Humble, and very

"Obedient Servant,

*Sic Subscribitur,*

David Baillie.

LV. The

**LV. *The Trial and Condemnation of Capt. John Quelch, and others of his Company, &c. for sundry Piracies, Robberies, and Murder, committed upon the Subjects of the King of Portugal, Her Majesty's Ally, on the Coast of Brasil, &c. at the Court-House in Boston, on the 13th of June, 1704.***

*At a Court of Admiralty held at Boston, in Her Majesty's Province of the Massachusetts-Bay in New-England, in America, the 13th Day of June, Anno Dom. 1704.*

**P R E S E N T,**

*Joseph Dudley, Esq;* Captain-General and Governor in Chief of the Provinces of the *Massachusetts-Bay and New-Hampshire, in New-England, in America,* and President of the Court, &c.

*Thomas Povey, Esq;* Lieutenant-Governor of the Province of the *Massachusetts-Bay.*

*John Usher, Esq;* Lieutenant-Governor of the Province of *New-Hampshire.*

*Nathaniel Byfield, Esq;* Judge of the Vice-Admiralty, for the Provinces aforesaid.

*Samuel Sewall, Esq;* First Judge of the Province of the *Massachusetts-Bay* aforesaid, and One of the Council.

*Isaac Audington, Esq;* Secretary, and One of the Council.

*Jablael Brenton, Esq;* Collector, &c. of Her Majesty's Customs, &c. in *New-England.*

<i>Elisha Hutchinson,</i>	} Esqrs. {	<i>Eliakim Hutchinson,</i>
<i>John Phillips,</i>		<i>Penn Townsend,</i>
<i>John Foster,</i>		<i>Edward Brumfield,</i>
<i>John Wally,</i>		<i>Samuel Legg,</i>
<i>Joseph Lynde,</i>		<i>Isaac Winslow,</i>
<i>John Thacher,</i>		<i>Samuel Appleton,</i>

Members of Her Majesty's Council, in the Province of the *Massachusetts-Bay, &c.*

*The COURT being Sat: Proclamation was made for Silence.*

**A**ND then the Statute made in the Eleventh and Twelfth Year of the late King *WILLIAM*, Entituled, *An Act for the more effectual Suppression of Piracy:* And also the late King *WILLIAM*'s Commission under the Great Seal, pursuant to the Act aforesaid, constituting the Court, &c. were publicly read.

After which, *John Valentine*, Gent. Notary Publick, was sworn Register of the Court by the President: And then the Register administer'd the Oath prescribed to the President; and then the President administer'd the Oath to the other Commissioners in open Court, pursuant to the Act aforesaid.

And then the Court was open'd by Three Proclamations, as a Court of Admiralty, for Trial of Pirates, &c.

After which was read Her Majesty's Proclamation, signifying Her Royal Pleasure, That all

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Persons being in Office of Authority, or Government, at the Decease of the late King, should so continue 'till Her Majesty's further Directions: Then was read Two Instructions from Her Majesty to His Excellency, in the Trial of Pirates, to govern the same according to the aforesaid Act of Parliament, and Commission thereupon.

A Warrant having been sign'd by several of the Commissioners to the Keeper of the Prison, to bring Captain *John Quelch* before them, to answer several Articles of Piracy, Robbery, and Murder, exhibited against him, and Company, pursuant to the Governor's Order for the Setting of the Court this Day.

The Court adjourn'd to Three of the Clock in the Afternoon.

When the Court being met, and open'd, *Matthew Pimer, John Clifford,* and *James Parrot*, (the first of whom had surrender'd himself quickly after his Arrival, to His Excellency the Governor,) were brought to the Bar, and Arraign'd upon several Articles of Piracy, Robbery, and Murder, drawn against Captain *Quelch*, and others his Accomplices.

Of the Tenor following, *Mutatis Mutandis.*

*At a Court of Admiralty, held at Boston, in Her Majesty's Province of the Massachusetts-Bay in New-England, in America, the Thirteenth Day of June, Anno Dom. 1704. And in the Third Year of the Reign of our Sovereign Lady ANNE, of England, &c. Queen.*

**ARTICLES** of Piracy, Robbery, and Murder, then and there exhibited against *John Quelch*, late of Boston, in the said Province, Mariner, Lieutenant of the Brigantine *Charles*, whereof *Daniel Plowman*, Mariner, deceased, was late Commander.

You stand here accused of Piracy, Robbery, and Murder.

**Imprimis. T**HAT notwithstanding the said Brigantine was fitted out by several worthy Merchants of *Boston*, good and loyal Subjects of Her Majesty, (against the *French* and *Spanish* Kings, their Vassals, Subjects, and Allies, the declared Enemies of Her most Sacred Majesty, *Queen ANNE*) who obtained a Commission for that Purpose, from His Excellency, *Joseph Dudley, Esq;* Her Majesty's Captain-General, Governor, and Commander in Chief, in, and over the said Province; by Force whereof, and in Pursuance of the necessary Instructions to your Commander, the said Captain *Plowman*, delivered'd,

**G g g**



liver'd, (whereof you were apprized,) He, with his Company, fail'd in the said Brigantine from *Boston*, the Fourth Day of *August*, 1703. for *Newfoundland*, and *L'Accade*; but falling violently sick, and languishing in his Cabbin, you, with divers others, for some Time, bolted the Cabbin Door upon him, and he, shortly afterwards, *That is to say*, the sixth Day of the said Month of *August*, died; you neglecting his Orders, and those of your Owners, to return with the said Private Man of War to *Boston*, would not set on Shore *Matthew Pimer*, and *John Clifford*, Two of your Company, who (dreading your Piratical Intention) earnestly desired the same; but bore up the Helm to Sea, directing your Course for *Ferdinando Island*, and the Coast of *Brazil*, whereby it is open, manifest, you intended Murders, Piracy, and Robberies; which afterwards you perpetrated.

I. For that you, the said *John Quelch*, with divers others, on, or about the Fifteenth Day of *November*, 1703. in the Second Year of Her Majesty's Reign, at, or near the Latitude of Seven, South Latitude, on the Coast of *Brazil*, at or near Cape St. *Augustine*, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of *England*;) piratically and feloniously, did surprize, seize, and take a small Fishing Vessel, (having *Portuguese* Men on board) and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Ally) and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically, did, by Force and Arms, take and carry away a Quantity of Fish and Salt, to the Value of three Pounds.

II. That you, the said *John Quelch*, with divers others, on, or about the Eighteenth Day of *November*, 1703. in the Second Year of Her Majesty's Reign, in or near the Latitude of Eight South, near Cape St. *Augustine* aforesaid, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of *England* aforesaid) piratically and feloniously, did surprize, seize, and take a small Brigantine, of the Burthen of about Fifteen Tons, (having *Portuguese* Men on board) and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Ally) bound for *Paranebuck*; and out of her, then and there, within the aforesaid Jurisdiction, feloniously and piratically, did, by Force and Arms, take and carry away Five Chests of *Brazil* Sugar, to the Value of One Hundred and Fifty Pounds, Six Barrels of Molasses, to the Value of Six Pounds.

III. That you, the said *John Quelch*, with divers others, on, or about the Twenty-fourth Day of *November*, 1703. in the Second Year of Her Majesty's Reign, at, or near the Latitude of Nine South, near Cape St. *Augustine* aforesaid, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of *England* aforesaid) piratically, and feloniously, did surprize, seize, and take a small Brigantine, of the Burthen of about Forty Tons, (having *Portuguese* Men on board) and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Ally) bound for *Paranebuck*; and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically, did, by Force and Arms, take and carry away Five Chests of *Brazil* Sugar,

to the Value of One Hundred and Fifty Pounds, a Quantity of Molasses, Rice, and Farine, to the Value of Ten Pounds.

IV. That you, the said *John Quelch*, with divers others, on the Fifth Day of *December*, 1703. in the Second Year of Her Majesty's Reign, at, or near the Latitude of Thirteen South Latitude, off of *Mora*, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of *England* aforesaid) piratically and feloniously, did surprize, seize, and take a small *Portuguese* Shallop, navigated by, and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Ally) and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically, did, by Force and Arms, take and carry away a Quantity of Earthen-ware, Value Five Shillings, Two Jars of Rum, Value Ten Shillings, a Quantity of Linnen Cloth, Value Ten Shillings.

V. That you, the said *John Quelch*, with divers others, on the said Fifth Day of *December*, 1703. in the Second Year of Her Majesty's Reign, at, or near the Latitude of Thirteen South, off, or near *Mora* aforesaid, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of *England*;) piratically and feloniously, did surprize, seize, and take a *Portuguese* Boat, navigated by, and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Ally) and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically, did, by Force and Arms, take and carry away some Pieces of Cloth, Value Five Shillings, Two Pieces of Silk, Value Twenty Pounds, and sunk the said Boat, Value of Thirty Pounds.

VI. That you, the said *John Quelch*, with divers others, on the Ninth Day of *December*, 1703. in the Second Year of Her Majesty's Reign, at, or near the Latitude of Thirteen South, off of *Mora* aforesaid, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of *England* aforesaid) piratically and feloniously, did surprize, seize, and take a *Portuguese* Brigantine, Burthen about Twenty Tons, and an open Boat, navigated by, and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Ally) and out of them, then and there, within the Jurisdiction aforesaid, feloniously and piratically, did, by Force and Arms, take about Fifty Pounds in *Portuguese* coin'd Money, a Negro Boy, Value Twenty Pounds, some Rice and Farine, Value Five Shillings.

VII. That you, the said *John Quelch*, with divers others, on the Twentieth Day of *December*, 1703. in the Second Year of Her Majesty's Reign, at, or near the Latitude of Twenty-three and Forty Minutes South, upon the Coast of *Brazil*, near the Island of *Grandee*, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of *England*) piratically and feloniously, did surprize, seize, and take a small *Portuguese* Brigantine, Burthen about Twenty-five Tons, navigated by, and belonging unto the Subjects of the King of *Portugal*, (Her Majesty's good Ally) and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically, did, by Force and Arms, take and carry away Five Chests of *Brazil* Sugar, Value One Hundred and Fifty Pounds, and a small Parcel



Parcel of *Portuguese* Money, some Gold and Silver, Value Fifty Pounds.

VIII. That you, the said *John Quelch*, with divers others, on the Fifteenth Day of *January*, 1703. in the Second Year of Her Majesty's Reign, at, or near the Latitude of Twenty-four South, upon the Coast of *Brazil*, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of *England*) piratically and feloniously, did surprize, seize, and take a *Portuguese* Brigantine, Burthen about Thirty-five Tons; she came from *Spirito Santo*, bound for *Rigineer*, navigated with, and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Ally) and out of her, then and there, within the Jurisdiction aforesaid, feloniously and piratically, by Force and Arms, did take and carry away One Hundred Weight of Gold Dust, Value Six Thousand Pounds, and Nine Hundred Pieces of coined Gold, Value Nine Hundred Pounds.

IX. That you, the said *John Quelch*, with divers others, on the Seventeenth Day of *February*, 1703: in the Second Year of Her Majesty's Reign, at, or near the Latitude of Thirty-five and Fifty Minutes, near the River of *Plate*, by Force and Arms, upon the High Sea, (within the Jurisdiction of the Admiralty of *England* aforesaid) piratically and feloniously, did surprize, seize, and take a *Portuguese* Ship, Burthen about Two Hundred Tons, Twelve Guns, loaden with Hides and Tallow, bound to *Bayes*, navigated with, and belonging unto the Subjects of the King of *Portugal*, (Her Majesty's good Ally) and then and there, within the Jurisdiction aforesaid, did feloniously kill and murder the Commander thereof, and wounded several others, and out of her, piratically, by Force and Arms, did take and carry away Twelve Barrels, and a Pipe of Beef, Value Ten Pounds; Four great Guns, Value Twenty Pounds; Four Patteraro's, Value Forty Shillings; Twelve small Arms, Value Six Pounds; One Hundred Weight of Shot, Value Three Pounds; Two Barrels of Powder, Value Twelve Pounds; a new Main-sail, Fore-sail and Foretop-sail, Value Forty Pounds; a Negro Boy, Value Forty Pounds; and about Two Hundred Pieces of Eight, *Spanish* Money, contrary to the Statutes in that Case made and provided.

Upon which Articles, *Mutatis Mutandis*, *Matthew Pimer*, *John Clifford*, and *James Parrot*, being arraign'd, severally pleaded Guilty.

Ordered, That *Matthew Pimer*, *John Clifford*, and *James Parrot*, be received into the Queen's Mercy, and be declared Witnesses in Behalf of the Queen, against *John Quelch* and Company, for their several Piracies, Robberies, and Murder.

Ordered, That *Matthew Pimer*, *John Clifford*, and *James Parrot*, stand within the Bar, and be sworn as Witnesses on Her Majesty's Behalf.

Ordered, That Captain *John Quelch* be brought to the Bar, where being brought, he was arraign'd upon the several foregoing Articles of Piracy, &c. to which the said *John Quelch* pleaded, Not Guilty, but moved for Time to prepare for his Trial.

Ordered, That Time be given him 'till Friday Morning next, at Nine of the Clock.

The Prisoner also moved, to know whether he might not have Council allow'd him, upon any Matter of Law that might happen upon his Trial.

Curia. The Articles upon which you are arraign'd, are plain Matters of Fact; however, that you may have no Reason to complain of Hardship, Mr. *James Meinzie*, Attorney at Law, may assist you, and offer any Matter of Law in your Behalf upon your Trial.

Ordered, That the Prisoner at the Bar have a Copy of the Articles exhibited against him; and then he was remanded to Prison.

Ordered, That a Minute be made, that it is declared by *Pimer*, *Clifford*, and *Parrot*, that *James Thurbur*, of *Swansey*, was not of the Company belonging to the Brigantine *Charles*, though named in the first Articles for the Voyage.

Ordered, That *John Lambert*, *John Miller*, *William Wilde*, *Benjamin Perkins*, *Christopher Scudimore*, *James Austin*, *John Dorothy*, *Nicholas Richardson*, *Richard Lawrence*, *John Templeton*, *John Pitman*, *Charles James*, *William Jones*, *Erasmus Peterson*, *John King*, *Francis King*, *Charles King*, *Peter Roach*, *Dennis Carter*, and *John Carter*, be brought to the Bar; who being placed at the Bar, were severally arraign'd upon the Articles of Piracy, Robbery, and Murder, before-mention'd, *Mutatis Mutandis*: To which they severally pleaded, Not Guilty, and then moved for Council, and Time to prepare for their Trial.

Ordered, That Mr. *Meinzie* assist the Prisoners in any Matters of Law, and that the Prisoners prepare for their Trial on Friday next, at Nine o'Clock in the Morning: And then the Court adjourn'd till Friday Morning.

Friday, June 16th.

Proclamation being made, the Court was opened, and Captain *Quelch* being brought to the Bar, presented a Petition in Behalf of himself, and the rest of the Prisoners, praying for further Time.

Ordered, That the Prisoners be allowed Time till Monday Morning next at Nine o'Clock, and then peremptorily to come upon their Trials: A Motion was also made by the Prisoner's Council, that the Queen's Witnesses might be kept asunder till the Prisoners came upon their Trials, to which it was answered by the Council for the Queen, that though in Cases of High Treason, and some other Cases, the Prisoners have been so far favoured, as that upon their Trials, Approvers, or other Evidences for the Crown, have been kept out of the hearing of one another, while they were giving their several Evidences, yet to separate them before their Trials, was without Precedent; upon which the Court deny'd the Motion of the Prisoner's Council in that Matter; but directed that at their Examination at the Bar, they should be separate. Then the Court adjourn'd till Monday Morning Nine o'Clock.

Monday, the 19th of June, 1704, at Ten o'Clock in the Morning.

The Court being opened, and Capt. *Quelch* set to the Bar.

Ordered, That his Irons be taken off during his Trial.

Mr. *Newton* of Council for the Queen. May it please your Excellency, and the Honourable Commissioners of this Court: The Prisoner at the



the Bar stands charged, for that he, the said *John Quelch*, late of *Boston*, in the Province of the *Massachusetts-Bay*, &c. Mariner, Lieutenant of the Brigantine *Charles*, whereof *Daniel Plowman*, Mariner, deceased, was late Commander, notwithstanding the said Brigantine, &c. Which Articles when we have prov'd upon the Prisoner at the Bar, we doubt not but your Excellency, and the rest of the Honourable Commissioners of this Court, will do him, our Nation, and the World that Justice, as to condemn and punish him for the same.

*Paul Dudley*, Esq; Attorney-General, and Her Majesty's Advocate for the Court of Admiralty. May it please your Excellency, and the rest of the Honourable Commissioners of this Court: The Prisoner at the Bar, stands articled against for, and charged with several Piracies, Robberies and Murder, committed by himself and Company, upon the High Sea, (upon the Subjects of the King of *Portugal*, Her Majesty's good Ally,) the worst and most intolerable of Crimes that can be committed by Men. A Pirate was therefore justly called by the *Romans*, *Hostis Humani Generis*: And the Civil Law saith of them, that neither Faith nor Oath is to be kept with them; and therefore if a Man that is a Prisoner to Pirates, for the Sake of his Liberty promise a Ransom, he is under no Obligation to make good his Promise; for Pirates are not entituled to Law, not so much as the Law of Arms: For which Reason 'tis said, if Piracy be committed upon the Ocean, and the Pirates in the Attempt happen to be overcome, the Captors are not obliged to bring them to any Port, but may expose them immediately to Punishment, by hanging them at the Main-yard; a Sign of its being of a very different and worse Nature than any Crime committed upon the Land; for Robbers and Murderers, and even Traytors themselves, may not be put to Death without passing a formal Trial: And if the Fate of the Prisoner at the Bar, with his Company, had allowed them to have been overcome in their Piracies, &c. and immediately hung up before the Sun, it had been very just upon them. But being then suffered to live, and now brought unto a Court of Justice, they are to be used, treated, and tried, as the Laws of *England*, and our own Country do direct. Hereupon I must observe, that until the Statute of the 28th of *Henry* the Eighth, all Piracies, Robberies and Murder committed upon the Sea, were Tried before the Admiral, his Lieutenant, or Commissary, after the Course of the Civil Law; the Nature whereof was, that before any Judgement of Death could be given against the Offenders, either they must plainly confess their Offences, (which they will never do without Torture,) or else their Offences be so plainly and directly proved by Witnesses indifferent, such as saw their Offences committed, which was next to impossible to be had, therefore that Statute enacted, That the said Crimes should be Triable in any County in *England*, by such and such Commissioners, and the Trial to be according to the Course of the Common Law: This Act continues in *England* in Force to this Day; and 'till very lately serv'd for all Piracies that were committed in the Plantations, or any Parts beyond the Seas. For *Kidd*, the last Pirate that went from this Country, was try'd

upon that Statute; but it proving very troublesome and chargeable to transport Pirates and the Witnesses, from the several Plantations, there was another Act of Parliament made in the 11th and 12th Years of the late King *WILLIAM*, that provides principally and particularly for the Trial of all Pirates, that are seiz'd in any of the Plantations. It is by Virtue of this Act of Parliament, and a Commission pursuant thereto, that your Excellency, and this Honourable Court, are now sitting in Judgment upon the Prisoner at the Bar, and his vile Accomplices; and though it may be thought by some a pretty severe thing, to put an *Englishman* to Death without a Jury, yet it must be remembered, that the Wisdom and Justice of our Nation, for very sufficient and excellent Reasons, have so ordered it in the Case of Piracy; a Crime which, as before I observ'd, scarce deserves any Law at all: Besides, the late Statute hath appointed such Commissioners, as will take Care to do equal Justice to the Prisoner on the one Hand, and to the Crown and Allies of *England* on the other. The *English* Word *Pirate*, is derived from a Word that signifies *Roving*; for Pirates, like Beasts of Prey, are seeking and hunting upon the Ocean, for the Estates, and sometimes the Lives of the innocent Merchant and Mariner: His Character and Description is thus; A Pirate is one, who, to enrich himself, either by Surprise, or open Force, sets upon Merchants and others trading by Sea, to spoil them of their Goods or Treasure, and oftentimes sinking their Vessels, and bereaving them of their Lives: And 'tis no wonder if Piracy be reckon'd a much greater and more pernicious Crime than Robbery upon the Land, because the Consideration of the General Navigation, and Commerce of Nations, is far beyond any Man's particular Property: Besides, whereas Robbery upon the Land, is most commonly from particular Persons; Piracy is from many, and oftner attended with the Death of others; thus it was in the Case now to be tried; one of the Captains of one of the *Portuguese* Vessels being unfortunately, if not basely kill'd and murdered in the Action. But before we proceed to the several Articles upon which the Prisoner is to be tried, I beg Leave a little to set forth the aggravating Circumstances of the Crimes committed by these vile Men: And to begin with their Mutiny, their rebellious, inhuman, I wish I might not say, their murderous Usage of their worthy Commander, Captain *Plowman*; God knows how far their Treatment of him might hasten his End; however, that must be answered for at a higher Tribunal. The next Thing I would observe in this Matter, is their Commission which they obtain'd from Her Majesty's Government of this Province, a Sword to fight the open and declared Enemies of Her Sacred Majesty; but, instead of drawing it against the *French* and *Spaniards*, they have sheathed it in the Bowels of some of the best Friends and Allies of the Crown of *England* at this Day; the *Portuguese* being Confederate with Her Sacred Majesty against the *French* and *Spaniards*, for the Peace, Rights, and Liberties of *Europe*: This was the Baseness, the Treachery, and Cowardice of this Matter, that instead of fighting for Honour with the *French*, or Money with the *Spaniards*, they must go and surprize a few

few honest and peaceable Men; and our good Friends, in their lawful Occasions, that neither thought, nor meant any Harm: Thus a Man falls before wicked Men. The third Thing I would observe, is the perfidious Impudence of these Men, for as they sail'd along the Coast of *Brasil*, they put in at one or two Places, and assured the *Portuguese* of their Friendship and Kindness; that their Designs were against the *French* and *Spaniard*; and yet at the very next Port, a few Leagues distant, they robb'd and plundered some of the Neighbours and Friends of those they had seen the Day before. The fourth and last Thing that I would mention, is the Number of their Crimes; for it was not once, twice, nor thrice, that would serve their Turns, but they go on in the Repetition of their Wickedness, till they were glutted, and thought they had enough of it: And as to the Prisoner now at the Bar, as his Share in just and lawful Prizes would have been at least double to any other, so no doubt but the same Measure will be of his Guilt in all this Matter: We shall now, May it please this Honourable Court, proceed to prove the several Articles charged upon the Prisoner; and our Proof will be partly Presumptive, partly Circumstantial, and partly Positive and Downright: The Presumptive Part of the Proof, is the Manner of their coming to this Place, being in that Sort as renders them suspicious to every Body; but especially I would observe their not being able to give any tolerable Account from whence they came, or had their Treasure. This was what induc'd their Owners to give an Information to the Government of the Matter; and our own Law in this Country against Piracies, is very plain in this Point of Presumption.

The second Proof that we shall offer, will be what we call Circumstantial; and indeed the Circumstances of this Matter are so many, that render it undoubted, but that the Prisoner, with his Company, have been guilty of the Articles charged upon him.

Then in the third Place, there is that which we call positive and downright Proof, *viz.* the Confession and Evidences of their Accomplices, who are now the Queen's Witnesses.

Mr. *John Colman*, and Mr. *William Clark* were Sworn to give Evidence, &c. and then produc'd Captain *Daniel Plowman's* Commission, which was read, as also his Instructions, and then his Owners Orders; as also the said *Plowman's* Letters from *Marblehead* to his Owners; then a Copy of the Owners Letter was read, which they sent to the several Islands, with his Excellency's Letter to the several Governors, &c.

Mr. *Colman* made Oath to their being true Copies of their Originals: After this, Mr. *Clark* brought into Court several long Spadha's, a *Portuguese* Ensign, two Skins full of Sugar, upon one of which was a Direction, and it being thought to be in *Portuguese*, *Edward Lyde*, Esq; and Mr. *Samuel Frazon*, being Sworn Interpreters, acquainted the Court that that Skin of Sugar was directed to a Person in *Lisbon*; adding withal, that if it had been *Spanish*, it would have been *al Signior*, whereas it was *Para*, &c. Whereupon the Skins were opened, and full of what was adjudged to be *Brasil* Sugar.

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Mr. *Lyde* also making Oath, that having been at *Maderas*, he had seen several Hundreds of those *Seroins*, or Skins of Sugar sent from *Brasil*, and that he verily believed, that what was now produced, was *Brasil* Sugar.

The Ensign, or Colours, were expos'd also in Court, and plainly seen to be *Portuguese*; and Mr. *John Colman*, and Mr. *William Clark* made Oath, That the Spadha's, Skins, Ensign, and other Things, were taken out of the Brigantine *Charles*, since her Arrival here.

Mr. *John Noyes*, Goldsmith, also was Sworn, and made Oath, That he had received of the Prisoner at the Bar, since his Arrival in the Brigantine *Charles*, a considerable Quantity of Coined Silver Money, and saw many of the Pieces to be *Portugal* Money, and judg'd the rest to be so too, but he cannot Swear it, the Prisoner at the Bar being then in his Shop, and melting them down himself.

After this, Mr. *Treasurer*, with his Deputy, came in with a Bag of Gold and Treasure brought in the Brigantine *Charles*, which being seiz'd, was committed to the Custody of the Treasurer of the Province and others, by Order of the Governor and Council.

Mr. *Jeremiah Allen* being Sworn, depos'd, That the Bag he had now in Court, contain'd the Treasure that was committed to the Treasurer and others.

Ordered, That Mr. *Colman's* Parcel of Gold be opened, who being asked whence he had that Gold? made Answer, That he received that and all the rest of the Owners Shares, from the Prisoner at the Bar: Upon viewing the Coined Gold, they were all found *Portuguese* Gold, and several of the Pieces were found to be Coined in 1703. Upon this the President observ'd, that the Money being Coined so lately, it was very improbable it should ever have been out of *Portuguese* Hands, Inhabitants of *Brasil*.

After this, some Prints that came in the Brigantine *Charles* were examin'd, and found to be in the *Portuguese* Language.

After this, a young Negro Boy, brought in by the Prisoner at the Bar, and Company, was set up by Order of the Court, was examined, and the Interpreters acquainted the Court that he was a Baptized Negro, his Name *Joachim*; that he lived with a *Portuguese*; his Master's Name *Josepho Galeno*; that he lived in the Bay of *All-Saints*, in *Brasil*; that he was taken by an *English* Brigantine, and that the Prisoner at the Bar was then on board the Brigantine that took him; and that when he was taken, he was pretty near the Land in an open Boat, with Fish and other Things in it; and that there were two *Portuguese* Men in the Boat at the same Time.

After this, the Court ordered the Interpreters to try the Negro Boy by *Spanish* and *French* Questions: But it was found he understood neither.

*Queen's Council.* May it please your Excellency, and the rest of the Honourable Commissioners, we shall now proceed to an higher Proof of this Matter, by examining those that have been allow'd to be the Queen's Evidence against the Prisoner at the Bar, and the rest of his Company.

We shall begin with *Matthew Pimer*, a skilful Mariner, who was shipp'd by Captain *Plowman* himself, to go against the *French*, &c.

H h h

Ordered,



Ordered, That *Pimer* be Sworn, the other two Witnesses removed out of hearing. Upon this, *Pimer's* Examination was read, which he swore to the Truth of.

*President.* What Reason had you to believe they were *Portuguese* that you robbed? Can you speak, or understand *Portuguese*?

*Pimer.* No, Sir; I do not understand the Language, but believe them all to be *Portuguese*, because we took them upon the Coast of *Brasil*; their Lading and Ensigns made me conclude they were *Portuguese*.

*Queen's Council.* If your Excellency please, we will examine the Witness upon each of the Articles and Matters the Prisoner at the Bar is charged with; but before we come to the Articles, we will examine him as to the Prisoner's Behaviour towards Captain *Ploverman*.

*Pimer.* *Anthony Holding* was the Man that bolted the Door upon the Captain, the Prisoner was then on Shore, but came on board that Night, and resolved to go to Sea, and after the Captain's Death, took the Command of the Brigantine.

*Queen's Council.* If your Excellency please, we will now read the first Article of Piracy, and see what the Witness can say to it: Which being read.

*Pimer.* There were five *Portuguese* on board that Vessel.

*Quest.* Was the Prisoner then in the Command of the Brigantine?

*Pimer.* *Ans.* The Prisoner was Commander of the Brigantine during the whole Voyage.

*Quest.* Did none of them you took, ask the Reason why you took them?

*Ans.* No, not that I know of; our Interpreter, *John Twiss*, had a great deal of Discourse with the Men we had taken, and said they were *Portuguese* that were taken now, and so afterwards: This first Vessel was a small Fishing-Vessel, out of which we took some Fish and Salt.

*Art. 2. Quest.* What do you know as to the second Article?

*Ans.* I remember the taking of that Brigantine, much in the same Latitude with the other, but nearer the Land; three white Men, and two Negroes were on board of her. This Brigantine had some *Brasil* Sugar and Molasses, two white Men and a Negro entered themselves to go with us, our Interpreter telling them we intended for the River of *Plate*, and to take the *Spaniards*; but afterwards as we took Prizes, the two white Men hid themselves, that their Countrymen might not see them.

*Article 3. Quest.* As before.

*Pimer.* I remember the taking of that Vessel, the Prisoner was then our Commander, and went on board of her himself, she was taken in Sight of Land, and bound to *Parnebuck*.

*Question.* Did not these People seem very much troubled that you should take them, you being *Englishmen*, and at Peace with them?

*Ans.* They were told, to the best of my Knowledge, that we were *Frenchmen*.

*Article 4. Q.* As before.

*Ans.* I remember the taking of this Earthen-Ware Vessel within three Leagues of the Shore, she had three Men on board her, came from *Bayes*, and bound to some Neighbouring Port; we gave the Men their Boat again, and they went to *Bayes*, the Prisoner was then on board the Tender that took her.

*Quest.* What Tenders do you mean?

*Ans.* We made use of one or two of the first Vessels; we took and put some of our own Men on board of her, and kept her the greatest Part of the Voyage.

*5. Article* Read, and *Pimer* being ask'd, saith, He remembers the taking of this Boat within three Leagues of the Land, saw the Flag of the Cattle at that Time she was taken by the Tender, *Quelch* and about Twenty-four of our Men on board her; we took two Prizes this Day; the Boat we took at this time was stav'd by some of the Company, as they told me, and afterwards sunk, the Men we took on board the Boat were all *Portuguese*, to the best of my Knowledge.

*Article 6.* Being Read, *Pimer* being ask'd, saith, That this Vessel was taken with the Tender, and *Quelch* on board her; the Negro Boy *Joa-chim* was taken out of this Vessel, and about Fifty Pounds in Money. The said Negro Boy being now examin'd, saith, there was a young Man on board that had some Money, and that it was in a small Canvas Bag.

*Pimer.* 'Twas a Canvas Bag to the best of my Knowledge; there was some Rice and Farine; which we took out of her, and then let the Men go away with their Vessel after we had pillag'd it.

*Article 7.* Read. *Pimer.* This Vessel was taken near the *Tropick* by *Quelch* in the Tender, but I was then on board the Brigantine *Charles*, the Quarter-Master had the Money that was taken out of her, being some Coined Gold and some Silver; this Vessel was taken very near the Shore, about two Leagues from the Place whence she came, and was bound to *Regineer*. I saw her when they brought her out of the Road, there was but one white Man on board her, he said he was a *Dutchman*, and afterwards of *Jusland*: Because the Captain would not give him a Share equal with the rest, he threatened he would inform against them, whereupon the major Part ordered him to be set on Shore, giving him a Gun, and some Powder and Shot; he could speak *Portuguese* very well: This Vessel was taken near the Island of *Grandee*.

*Article 8.* Read. *Pimer.* I was in the Boat that took the Gold Brigantine, and commanded to do it by the Captain's Order; we had found some of the Gold before the Captain came on board; he took the Gold, and carried it himself on board the Brigantine *Charles*: I saw it weighed about three Days after: I saw the Coined Gold taken, it had a late Date, some a Year or two standing. The Vessel came from *Spirito Santo*, was taken within two Miles of the Land, and under Sail, had on board fourteen Men, all Whites, two Women of good Fashion: There were ten Hands in the Boat with me when we took her; there was no Body on board her could speak any Language I understood: We kept them on board our Brigantine till next Day, and then gave them their Brigantine again.

*Article 9.* *Pimer.* This Ship was taken by our Brigantine *Charles*, the Prisoner at the Bar, then our Commander, being on board; the River of *Plate* was there six or seven Leagues over: We gave her Chase about two Days, she fir'd three Guns at us before she put out her Colours, which were *Portuguese*; her Ensigns was

was not up till within Half an Hour before she was taken; I was not on board her, but Captain *Quelch* was, though many of our Men had entered her before he did; she had about thirty-five Men and twelve Guns: When this Ship fired upon us, we had *English* Colours flying; we kept the Ship for some Time, and took out of her what is set forth in the *Ninth Article*. This Ship came from a *Portuguese* Castle, had been out about twenty-four Hours, and was bound for *Bayes*.

*Pres.* Set up the Negro Boy who was taken in this Ship; which being done, and examined by the Interpreters, saith his Name is *Emanuel*; that he was baptized; lived in the River of *Plate*; his Master's Name was *Bastian*; was a *Portuguese*, and Captain of the Ship that was taken by the Brigantine, in the River of *Plate*; that he saw one of *Quelch's* Company shoot his Master with a Pistol; that his Master died immediately of that Wound; that he heard say the Words, *Kill him*: Says, that there were no more Men kill'd on board besides his Master, only two wounded: Adds, that his dead Master was thrown over-board immediately after his Death; and says, that he saw the Prisoner at the Bar, come on board the *Portuguese* Ship, arm'd with a Cutlase and two Pistols.

After this, the Interpreters were directed to examine both the Negro Boys, what their new Masters bid them say of themselves when they came to *New-England*; to which the Negro Boys made Answer, That their Masters bid them say, they were not *Portuguese*, but *Spanish* Negro Boys.

*Curia.* *Pimer*, Have you any thing further to offer to the Court relating to the Prisoner?

*Pimer.* When we came about the Latitude of *Bermuda*, the Company ordered my Journal to be taken from me, lest I had writ something that might do them Damage; and refusing to tear out my self what Captain *Quelch* would have had me, he tore it out himself, about five or six Leaves, from *October*, to *February* 20, that they committed their Piracies. Captain *Quelch* made a Speech, telling them, What they should say when they came on Shore; as that we had met with some *Indians*, who had got great Treasure out of a Wreck, of whom we had our Gold; and whereas we never had any Gold from any *Indians*, it being but once that any of them were on board of [us, and then we did not trade with them. It being now late, the Court adjourn'd till Four o'Clock in the Afternoon.

*Monday*, Four o'Clock in the Afternoon: *Clifford*, the second Witness, was Sworn, and *Parrot* removed out of hearing.

*Pres.* You are now to acquaint Her Majesty's Commissioners of this Court, of what you know relating to the Prisoner at the Bar, his being Guilty of what he is charged with in those Articles which you have heard read.

*Clifford.* Yes, Sir, I shall; and I will begin with the bolting the Door upon our Captain *Plowman*. *Peter Roach*, one of the Company, kept the Door by Order of *Anthony Holding*, and some others that rose up to run away with the Vessel. The Prisoner at the Bar was then on Shore, but when he came on board, did not object against what was done, or what they were intending to do: *Quelch* then at that Time had some Command, but

*Holding* was the Ringleader, and had the Majority of the Crew on his Side. *Pimer* and my self offered to go to the Captain, but the Centinel that guarded the Door with a Sword in his Hand, would not let us.

*Pres.* Let the Articles be read, and let the Evidence say what he can to each of them.

*Art. 1.* Read. *Clifford.* The first Prize that we took any Thing out of, was a Fishing-Boat, out of whom we took some Fish and some Salt, near *Parnebuck*, and that which induced me to think it was a *Portuguese* Vessel, was, because 'twas taken near their own Shore: But I do not understand the *Portuguese* Language.

*Art. 2.* Read. *Clifford.* This was the Second Vessel we took, a Brigantine that we carried with us during the Voyage, *Quelch* was then our Commander, and went on board the said Vessel himself.

*Art. 3.* Read. *Clifford.* I remember well the taking of this Vessel by *Quelch* himself; we carried a Pilot along with us, who told us they were *Portuguese*. *John Twist*, who is since dead, was the Linguister's Name. One of the Prisoners, who was first taken, understood a little *English* by this Time, and then ask'd what was the Reason that we, being *English*, took the *Portuguese*. And one of our Men, named *Isaac Johnson*, the *Dutchman*, was whipt, for telling them we were *English*.

*Art. 4.* Read. *Clifford.* I remember the taking this Vessel very well, she was taken by one of the Prize Vessels; I saw the Earthen-ware that was taken; we were all along, during the Captions, in Sight of the Shore, and near *Mora*.

*Art. 5.* Read. *Clifford.* I remember the taking of this Boat by Captain *Quelch*; the Men that we took were *Portuguese*, as we were told by our Interpreter: I do not remember any of the Vessels we had yet taken had Colours.

*Art. 6.* Read. *Clifford.* I saw the Bag of Money, but cannot tell how much there was of it. The Negro Boy, *Cuffee*, was then taken; at first he waited on the whole Ship's Crew, but then was sold at the Mast, to *Benjamin Perkins*: This Vessel was taken by a Tender, with about Fifty Pounds, all white Money.

*Art. 7.* Read. *Clifford.* I remember this Vessel was taken by our Tender, near the Island of *Grande*; I saw the Sugar brought on board (the Brigantine *Charles*) and some of the Gold; there was only one *Dutchman* in this Vessel, who enter'd himself with us for the Voyage. But because the Company voted he should not have a full Share, he threaten'd, when he came on Shore, what he would discover; upon which, they voted him to be put on Shore, Capt. *Quelch* being present at their Vote.

*Art. 8.* Read. *Clifford.* I was not in the Boat that took this Brigantine: I saw the Hundred Pound Weight of Gold Dust on board the Brigantine *Charles*, which Capt. *Quelch* shared among us. There might be about Fifteen or Sixteen Men, with Two Women, on board the Brigantine that was taken, she came from *Spirito Santo*, and was bound for *Rio de Januero*, she was taken by our own Pinace, with half a Score Men, the Prisoner not in it.

*Art. 9.* Read. *Clifford.* I was on board this Ship when she was taken, and so was the Prisoner at the Bar. It was thought the Captain of her was



was wotinded before we boarded her; but there was some Dispute among the Men, which of them it was killed him: Capt. *Quelch* commanded the Brigantine when we took her. We took Ten or Twelve Barrels, and a Pipe of Beef in her, and sundry other Things. I saw such an Ensign as that which was shewn in Court in the Forenoon; on board the Ship. We took also that Negro Boy, who was in Court in the Forenoon.

Then *Clifford* was set by, and *Parrot*, the third Witness for the Queen, was brought in.

*Pres. Parrot*, You are now to give an Account to Her Majesty's Commissioners of this Court, of what you know relating to the Prisoner at the Bar, his being guilty of what he is charged with, in those Articles which you have heard read.

*Parrot*. I can say nothing as to the Prisoner's Carriage towards Capt. *Plowman*, but the Cabbin Door was bolted upon him, and I believe, was a contriv'd Thing before we went off of the Land; the Prisoner at the Bar was not on board 'till Night. When the Captain was thrown over-board, then he took upon him the Command, and order'd us to sail to Sea.

*Art. 1. Read. Parrot*. We were not in Sight of Land, but believe the Vessel to be *Portuguese*, being upon the *Brasil* Coast.

*Art. 2. Read. Parrot*. I saw the Caption of this Vessel, which was a Brigantine; she was taken by the little Fishing Shallop, commanded by Capt. *Quelch*: I was afterwards on board her, and saw the Sugar brought on board the Brigantine *Charles*.

*Art. 3. Read. Quest*. Do you remember the Caption of this Vessel?

*Parrot*. I remember it very well; Capt. *Quelch* was on board the Vessel that took her; we kept her two or three Days.

*Art. 4. Read. Quest*. What do you know concerning the taking of this Vessel?

*Parrot*. I remember the Vessel with Earthenware; it was an open Vessel, taken in Sight of Land. There was Molasses in the Pots; there were Men and Women on board her, whom we took on board the Brigantine *Charles*. We lost the Boat's Rudder, so that she could not sail, wherefore we took her in Tow; and taking out what we had need of, we then sunk her. Capt. *Quelch* and I were in the Brigantine that took this Vessel.

*Art. 5. Read. Quest*. Do you remember the Caption of this Vessel?

*Ans*. Yes; I had some of the Silk taken in this Vessel; so much as would make me a Pair of Breeches. We took all these Prizes after the first Fishing-Boat, in Sight of the Shore, as near as I can remember.

*Art. 6. Read. Quest*. As before.

*Parrot. Ans*. I remember this Caption; the Prisoner at the Bar was at it; they were *Portuguese* that were on board. I was put on board that Boat that *Coffee* was taken out of; and out of that Boat I took about Twenty or Thirty Pound of *Portugal* Money. She had Rice and Farine in her, which we took out of her.

*Art. 7. Read. Quest*. As before.

*Parrot. Ans*. I believe this was the Brigantine we took at an Anchor before the Town. I went to fetch her my self; Capt. *Quelch* went over with us; we took Four or Five Chefts of *Brasil* Sugar; all the Men had run away, and left the Brigantine, only one Man, who at first said he was a *Dutchman*, but afterwards we found he was a *Jutlander*.

*Art. 8. Read. Quest*. As before.

*Parrot. Ans*. *Quelch* did not take this Vessel; she was taken by our Boat, but I was not in the Boat that took her. Capt. *Quelch*, the Quarter-Master, and Carpenter, shared the Hundred Pound Weight of Gold Dust among us.

*Art. 9. Read. Quest*. As before.

*Parrot. Ans*. I was present at the Caption of this Ship: Capt. *Quelch* was the Commander of the Brigantine; we saw the said Ship Two or Three Days before we took her. I saw the Colours, that were in Court To-day, first on board our Brigantine. We took Beef, Sails, Shot, Powder, four Guns, and an hundred Pieces of Eight, and odd; and a Negro Boy, whom one *George Norton* bought. The Captain was thrown over-board before I came on board; he was said to be kill'd by *Scudamore*, our Cooper.

*Pres. Quest*. And was the Prisoner at the Bar, Captain of your Brigantine, during all this Time that you took these several Vessels you have mention'd?

*Parrot. Ans*. Yes; and a little before we came in, it was agreed that we should say, we took our Gold out of a Vessel, that ran ashore about *Port Maranto*, but that the *Indians* were first at work upon her; *Anthony Holding* first called us up upon Deck; *Pimer* told me, they had torn out Part of his Journal, and that they order'd every one to throw over-board whatever *Portuguese* Prints they had.

*Pres. Quest*. *Pimer*, or *Clifford*, have you any thing further to offer?

*Clifford. Ans*. I saw the Captain take *Pimer's* Journal out of his Hands, and order it to be torn out, and all *Portuguese* Prints to be thrown over-board. We were all upon the Deck, when it was concluded we should say, we had taken the Gold out of some Wreck that the *Indians* had acquainted us with.

*Pimer*. I saw the Man whipt, that told them the Brigantine belonged to *New-England*. The Captain and Quarter-Master order'd him to be whipt; *Anthony Holding* was the Man who whipt him. I was down below when the Agreement was made, what we should say when we came ashore, and was abused by *Peterfon* when I came upon Deck, because I was not present.

*Mr. Newton*. May it please your Excellency, &c. We shall now (though there be no Necessity for it) prove, that long before, and at the Time that these several Piracies, &c. were committed, Her Sacred Majesty, and the King of *Portugal*, were entered into a strict Alliance, &c.

Upon this, Two *London* Gazettes, dated in the Months of *May* and *July*, 1703. were produced, and Two Paragraphs thereof were read, *Viz*.

*Whiteball, May 24*. The Treaty of Alliance, between the Emperor, Her Majesty, the King of *Portugal*, and the States General, which has been so long talk'd of, was sign'd at *Lisbon* the 16th Instant, *N. S.* and is brought hither by an Express.

*Whiteball, July 14*. Yesterday the Ratification of the Treaties, lately concluded at *Lisbon* with the King of *Portugal*, passed the Great Seal.

*Pres*. Gentlemen of the Queen's Council, Have you now done on the Queen's Part?

*Queen's Council*. Yes, Sir; we have gone through the Course of the Queen's Evidence against the Prisoner at the Bar.

*Pres*.

*Pres.* Capt. *Quelch*, this Court is now ready to hear what you have to offer for yourself.

*Quelch.* My Council informs me, that he hath sundry Matters of Law to offer to your Excellency on my Behalf.

*Pres.* Mr. *Meinzies*, If you have any Matters of Law to offer in Behalf of the Prisoner at the Bar, we would hear it.

Mr. *Meinzies*, I have several Matters of Law to offer in Behalf of the Prisoner, &c. but before I mention them, I pray that I may not be thought any wise to justify, or extenuate the horrible Crimes that are charged upon the Prisoner; for they are such, that all the World must needs detest and abhor: But, as 'tis equal Justice to acquit the Innocent, as to condemn the Guilty; so, if the Evidence which has been produced against the Prisoner at the Bar, don't amount to make him guilty of the several Articles he stands charged with, this Court must needs acquit him.

The first Objection I make to the Evidence, is what was last produced, I mean the Gazettes.

Mr. *Newton*. The Gazette is publish'd by Authority, and has been often allow'd as good Evidence.

*Pres.* The Stress of this Matter does not lie upon the Alliance. Suppose they were not in Alliance with the Crown of *England*, yet if there was no War between the Two Crowns, the Prisoner at the Bar, with his Company, had been guilty of Piracy. *Kidd* was hang'd for robbing the *Great Mogul*.

Mr. *Meinzies*. But, may it please your Excellency, suppose we should bring Proof, that the Gold Dust imported in the Brigantine *Charles*, and now shewn in Court, to be *Spanish Gold Dust*.

*Pres.* Can you prove it?

Mr. *Meinzies*. We have a Goldsmith here, whom I desire may be sworn.

*David Jefs Sworn.* Says, That he has seen a great deal of the Gold Dust that was brought in by these Pirates, but hath not so much Skill as to tell whether it be *Spanish*, or *Portuguese* Dust, and believes no Body else can distinguish one from the other.

*Pres.* You attempt a very vain Thing, for had the Dust been dug in *Mexico*, yet if our Friends have it in keeping, it is Piracy to take it from them. Besides, What Answer can you give to all the coin'd Gold shewn in Court, with the other Things, which appear plainly to be *Portuguese*?

Mr. *Meinzies*. The next Thing, in Point of Law, that I would offer, upon the Evidence against Capt. *Quelch*, is, That the several Witnesses differ very much, as to the Places where the several Vessels were taken, and as to the Number of Persons that were on board those Vessels.

*Pres.* That Difference is very immaterial; for it matters not what Number of *Portuguese* there were on board, so there were any: And as to Difference of Place, or Latitude, Two Artists may differ in their Observations at the same Time; and you have heard the Reason why one of the Witnesses cannot be so positive as to his Latitudes, viz. because Capt. *Quelch* cut out his Journal, but he, and all the rest, are positive it was done upon the Coast of *Brasil*, in their very Harbour, and in Sight of their Forts and Castles.

Mr. *Meinzies*. 'Tis plain, That none of the Witnesses understand the *Portuguese* Language, and it ought to be very positive Evidence to take away a Man's Life.

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*Pres.* I believe Her Majesty's Commissioners, now present, will think they have very positive Proof; however, they are the Judges of that.

Mr. *Meinzies*. The next Thing, in Point of Law, that I would offer, in Behalf of Capt. *Quelch*, is, That whereas, in the last Article, he is charged with the Murder of the *Portuguese* Captain; it is well known he was not the Man that did the Fact. Now, by the Civil Law, only he that gives the Stroke, Wound, or the like, is the Murderer: So says *Molloy*, in his Treatise *De Jure Maritimo*, in his Chapter of Piracy.

Mr. *Newton*. But the same Book says, That if the Common Law have Jurisdiction of the Cause, all that are present, and assisting at such a Murder, are Principals. Now the Statute 28 *Henry VIII.* makes all Piracies, Robberies, and Murders upon the High Seas, triable according to the Rules of the Common Law, as if they had been committed upon the Land.

Mr. *Meinzies*. May it please your Excellency, I have yet one Thing further to offer against the Queen's Witnesses in this Matter: That is, That they are not competent Witnesses, having not had Her Majesty's Pardon.

Mr. *Newton*. It has never been thought convenient to give Approvers their Pardon, until they have actually convicted their Accomplices; lest, after their having their Pardon, they may refuse it; although after they have convicted those they approve, their Pardon is *ex Debito Justitie*. This is the Opinion of my Lord *Coke*, in his Pleas of the Crown, and so has the Practice been since.

Mr. *Meinzies*. I have but one Thing more, may it please this Honourable Court, to offer in Behalf of Capt. *Quelch*, That is, upon the late Act of Parliament, made in the late Reign, which appoints this Honourable Court, for the Words of it are, *That the Proceedings of this Court, in Examining, Trying, and Condemning Pirates, shall be according to the Civil Law; and the Methods and Rules of the Admiralty.*

Now, by the Civil Law, which is founded upon the Reason and Custom of Nations, no Accomplice can be a Witness, being equally guilty with those he accuses. So says *Wiseman*, Doctor of the Civil Laws, in his Treatise of the Civil Law, Chap. 8. page 73. And in the same Book touching examining Witnesses upon Oath, page 114, and 119. And the same Author observes, That among the *Romans*, when a Man was criminally accused, they were so tender of the Lives and Safety of their People, that to convict a Man by Proof, was no easy, but a very difficult Thing, &c. The allowing these Witnesses will be inconsistent with the Act of Parliament itself, whereby the Persons accused have not only the Benefit of cross-examining the Witnesses, but also of bringing Evidences for their own Vindication; and it may be thought as proper to bring some of their own Company for their clearing, as the other Evidences for the accusing them. As to Witnesses in Piracy, see *Coke's Institutes*, Part 3d, page 24, 25. As to the Admiral's Power of Jurisdiction, *Coke's Institutes*, Part 4, page 134; and *Proceedings on Piracy*, page 147, 154, and Part 3d, page 119, 192.

*Queen's Advocate.* What Mr. *Meinzies* says, may it please your Excellency, of the Civil Law, is so far certain, That the Witnesses in Cases of Piracy, by the Methods of the Civil Law, must be such as are indifferent, and saw the Fact committed,



mitted, but no ways concern'd in the doing of it: But this Method of trying of Pirates, the Statute of *Henry VIII.* complains of, as too strict, and tending rather to let Pirates escape, than be brought to Justice; and does therefore perfectly reject it, and does Enact, That for the future, all Piracies, &c. committed upon the High Seas, shall be tried according to the Course of the Common Law, as if they had been committed upon the Land.

Now it is very well known, That by the Common Law, Accomplices are many Times admitted to be Approvers against those that were Partners with them in their Crimes; and, indeed, in many Cases, there happens to be no other Way to bring Criminals to their just Punishment, but by singling out some of their Company, that may be the least guilty, and make use of them to convict the rest.

Mr. *Meinzius*. I don't take myself to be thoroughly answer'd by Mr. Advocate, as to what I offer'd in the last Place; for I take the Case of Pirates, that may be try'd in *England*, upon the Statute of *Henry VIII.* to differ very much from the Case of Pirates that are try'd in the Plantations, by Virtue of the New Statute: For, admit that in the former Case, Accomplices, or Approvers may be allow'd as Witnesses; since Pirates that are try'd upon that Statute, are allow'd a Jury, yet in the latter Case, those that are try'd for Piracy in the Plantations, being deprived of the Benefit of a Jury, the Statute seems to design an Equivalent to a Jury, by directing the Commissioners of such Courts, to proceed according to the Civil Law, and Method of the Court of Admiralty.

*Queen's Advocate*. As to the Method of the Court of Admiralty, 'tis now above an Hundred and Three-score Years since the Statute of *Henry VIII.* was made; a Term long enough to make a Method of any Court; for ever since that Time hath the Court of Admiralty proceeded in Cases of Piracy, according to the Rules of the Common Law. And then, as to that other Part of the new Statute, relating to Piracy, that says, This Court is to proceed according to the Civil Law; with Submission, we understand it to be of the summary Way of proceeding by the Commissioners, and depriving the Prisoner of a Jury; for 'tis most certain, That the late Statute against Piracy, doth strengthen and establish the Statute of *Henry VIII.* And it would be very odd to suppose, that what the first Act of Parliament in these Cases had rejected, and condemn'd, the Method of the Civil Law, in the Trial of Pirates, &c. the second Act of Parliament should be reconciled to that Method, to restore and set it up in the Plantations, especially when the Title of the new Act, is an Act, *For the more effectual Suppression of Piracy, &c.*

*Pres.* Capt. *Quelch*, if you have any Thing further to offer for yourself, or if you would cross-examine the Witnesses, the Court will hear you.

Capt. *Quelch*. I desire *Pimer* may be ask'd, Whether there was any Bolt upon the Captain's Cabbin Door, when we first sail'd?

*Ans.* *Pimer*. It was fasten'd with a Marlin Spike.

Capt. *Quelch*. Was I then on board?

*Pres.* The Witnesses have answer'd as to that already.

Capt. *Quelch*. I desire the Witnesses may be ask'd, Whether they know the Gold Dust, to be *Portuguese Dust*?

*Pres.* This is not material, Capt. *Quelch*.

Capt. *Quelch*. I desire *Pimer* may be ask'd, How he knows the first Prize was taken the Fifteenth of *November*?

*Pimer*. I say it was on, or about that Day; I set down the very Day in my Journal, but 'twas torn out, I cannot now swear to a Day.

Capt. *Quelch*. How many Tun was the second Vessel that was taken?

*Pres.* Capt. *Quelch*, this is not cross-examining the Witness, but rather examining him over again: If you would say any Thing to the Purpose, you should acquaint this Court, where you took those Quantities of Gold Dust, and coin'd Gold, those Negroes, &c. that have been shewn to this Court: If they were taken from the *French*, or *Spaniards*, let us see some of them here, or some Evidence of their being so taken.

*Queen's Advocate*. We are now gone through the Course of the Queen's Evidence against Capt. *John Quelch*, the Prisoner at the Bar, and besides what his Accomplices have declared against him, the Circumstances of this Matter are so many, as put it beyond all Question, but that the Prisoner at the Bar is guilty of what he stands charged with; for upon his Trial, we have seen the King of *Portugal's* Ensign flying, his Coin current, his Servants, I mean his Negroes waiting, his Merchandize expos'd to publick View, inasmuch, one would think that we were in *Portugal* itself. Upon the whole Matter, we must leave it to Her Majesty's Honourable Commissioners of this Court, to consider, whether Capt. *John Quelch* is not guilty of the several Piracies, Robberies, and Murder, that he stands charged withal.

*Ordered*, That the Court be clear'd immediately.

After an Hour's Consideration, the Court was open'd again.

*Pres.* Capt. *John Quelch*, 'tis now Six Days since this Court first sat, by Her Majesty's special Command to myself, and these Gentlemen Commissioners, before whom you have been indicted upon, or charged with several Articles of Piracies, Robberies, and Murder; and you have been heard thereupon. This Court hath weigh'd and considered the several Evidences that have been produced on Her Majesty's Behalf against you, and your own Allegations for you; and upon the whole, have found, and adjudge you guilty of the several Articles of Piracy, Robbery, and Murder, wherewith you are charged, and have agreed, that Sentence should be pronounced against you for the same accordingly.

*Register*. Make Proclamation of Silence.

*Crier*. All manner of Persons are commanded to keep Silence while Judgment is giving, upon Pain of Imprisonment.

And then Sentence was pronounced by the President of the Court, as the Law directs in Cases of Piracy, &c.

Then the Court adjourn'd 'till Nine o'Clock next Morning.

*Tuesday 20th of June, 1704, in the Morning.*

The Court being open'd, and Proclamation made, Three Negroes, belonging to Capt. *Quelch's* Company,

Company, were set to the Bar, viz. *Cesar-pompey*, *Charles*, and *Mingo*, and arraign'd, upon the Articles of Piracy, &c. aforesaid, (*Mutatis Mutandis*) and severally pleaded, Not Guilty.

*Queen's Advocate*. May it please your Excellency, and the rest of the Honourable Commissioners of this Court; the Three Prisoners now at the Bar, are of a different Complexion, 'tis true; from the rest that have been arraigned upon these Articles; but it is very well known, that the first and most famous Pirates that have been in the World, were of their Colour, and Negroes; though Slaves, are as capable of taking away the Lives and Estates of Mankind, as any Freemen in the World; and if we prove, that these Fellows have been as active in all this Matter as the rest of the Company, we doubt not, but you will think, and adjudge them equally guilty with the others.

*Pres. Pimer*, look upon the Prisoners now at the Bar, and acquaint the Court, Whether they were on board the Brigantine *Charles*, during your late Voyage, and how they behaved themselves while they were on board.

*Pimer*, (looking on the Prisoners.) Those Three Negroes were on board during the whole Voyage, but were not active, nor did they any thing but as they were commanded: *Cesar-pompey*, and *Charles*, were the Cooks of the Brigantine; and sounded the Trumpet when they were commanded, but handled no Arms; neither did *Mingo*.

*Clifford* and *Patrot* being examin'd, affirm'd the same Thing.

*Pimer* farther added, That he knew *Mingo* to have been Capt. *Plowman's* Slave; and that he brought him from *Guinea*.

*Mr. John Colman* inform'd the Court also, That the other Two Negroes, *Cesar-pompey*, and *Charles*, were his Brother Colonel *Hobbes's* Slaves; That they did not run away from their Master, but were forcibly carried away by Capt. *Queleb*, and Company.

Upon this, the Court being clear'd, in less than half an Hour, was open'd again, and the Three Negroes aforesaid brought in.

*Pres. Caesar-pompey, Charles, and Mingo*; you have been charged with several Articles of Piracy, &c. to which you have pleaded, Not Guilty; this Court has consider'd of the Matter, and declare you to be Not Guilty.

Whereupon, they were order'd upon their Knees, &c.

After this, *Mr. Meinzius* moved for some farther Time for the rest of the Prisoners; and then the Court adjourn'd 'till Three o'Clock Afternoon.

### Three P. M.

The Court was open'd, and Proclamation made: Then *Lambert, Wilde, Scudamore, Roach, Perkins*, and *James*, were set to the Bar, and after some little Time spent, *John Lambert*, and *Charles James*, desired that they Two might be try'd by themselves; upon which the Court order'd the rest to be taken from the Bar; and then the Court proceeded to examine the Witnesses on Behalf of the Queen against the Prisoners.

*Pres. Pimer*, What do you know as to *Lambert's* being concern'd in confining Capt. *Plowman*, and altering the Voyage?

*Pimer*. I can't say, that either he, or *James* were concern'd in bolting the Cabbin Door, but

they were both on board when we came to sail; and though they declared they were unwilling to go to the Southward, yet after Capt. *Plowman's* Death, there was a Consultation held, and both *Lambert* and *James* were at it; and I know nothing to the contrary, but that they consented with the Majority.

*Court*. Please to let the Articles be read to the Witnesses, and then ask, how far *Lambert* and *James* were concern'd in all, or any of them.

*Art. 1. Read. Witnesses. Lambert and James* were on board when we took that Vessel, and so at the Second and Third, Fourth and Fifth.

*Pres.* And as active as any of the rest?

*Witnesses.* Yes.

*Art. 6. Read. Witnesses.* They were both on board our Brigantine when this was done, and assisted at the Seventh and Eighth Captions.

*Art. 9. Read. Witnesses.* *Lambert* was on board the Tender, above a Mile off at that Time, but *James* was one that boarded the Ship.

*Pres. Lambert and James*, Would you ask the Witnesses any Questions?

*Lambert*. I was sick down in the Gun-Room, when they bolted the Door upon the Captain, and never gave my Consent to go to the Southward. What I did I was forced to.

*Pres. Pimer*, Did you ever hear *Lambert* protest against any of these piratical Actions, or did he desire to be set on Shore?

*Pimer*. He did desire to be set on Shore, but it was before the Captain went from *Nantasket*. I never heard any of them manifest their Dislike as to our going to *Brasil*, but were as forward as the rest were.

*Pres. Pimer*, Do you know whether *Lambert* and *James* had their Share of the Treasure?

*Witnesses.* They had each of them their Shares.

*Pres.* What say you, *James*?

*James*. I was constrain'd against my Will, to go to Sea, and was deluded by false Pretences.

*Pres. Pimer*, What say you as to *James*?

*Pimer*. I cannot say that he said any Thing of what he pretends he said, but that he was unwilling to Pilot the Ship, which I judged was, because he was averse to the Voyage.

*Pres.* Did you hear *Lambert* advise the Captain to go off from the Coast of *Brasil*, against some known Enemy?

*Witnesses.* No, we never heard him give any such Advice.

*Pimer*. I have heard him several Times declare himself against the Voyage, but never express himself sorrowful for, or protest against any of the Piracies, nor *James* neither.

*Pres.* You have brought in a very considerable Treasure with you, whereof each of you have had your Shares; Whence had you it? Where are the *French* and *Spaniards* you took it from?

*James*. It was the Commander did it; and we were not on board the Vessel that took the Gold Dust. The Reason we accepted of our Shares was, because otherwise they would have kill'd us, or set us upon some desolate Island, where we should have been starved.

*Lambert*. I was only at the taking of Two of the Vessels; and you may be sure, I would never have come Home in the Vessel, if I had thought I had done any Thing amiss, or that I should have been arraign'd for.

The Prisoners having nothing farther to offer, the Court was ordered to be cleared, and in some small



small Time after open'd again, and the Prisoners set to the Bar.

*Pres. John Lambert, and Charles James:* You have here been Arraigned upon several Articles of Piracy, &c. committed by you, (with others,) upon the Subjects of Her Majesty's good Ally, &c. to which you have pleaded, Not Guilty: You have been heard thereupon, What you had to say for your selves: This Court having considered the Evidence for the Queen against you, and your own Allegations for you, do adjudge each of you Guilty of the several Articles of Piracy, &c. What have you to say, Why Sentence of Death should not be pronounced against you?

*Ans.* We must leave it to God and your Honours: We are as innocent as the Child unborn of the Things we are charged withal.

*Pres.* Harken to the Sentence of the Court against you.

Then Sentence was pronounced by the President of the Court, as the Law directs in Cases of Piracy, &c.

After this, *Benjamin Perkins, William Wilde, Christopher Scudamore, and Peter Roach,* were set to the Bar.

*Ordered,* That *Scudamore* be tried by himself, and the rest taken from the Bar.

The several Articles being read to the Witnesses, they all swore that *Scudamore* was with them all the Voyage; that he was very active in every thing, and that he had his Share of the Gold.

*Queen's Advocate.* May it please your Excellency, we shall farther prove against the Prisoner at the Bar, That he was the only Man who gave the mortal Wound to the Captain of the Portuguese Ship.

*Pres. Pimer,* What do you know as to that?

*Ans.* There was a Controversy on board our Brigantine, concerning who it was that killed the Captain of the Portuguese Ship, *Scudamore* saying it was he, and another said it was he that did it.

*Pres.* Set up the Negro Boy who was taken in that Ship.

The Negro Boy being set up, was bid to look upon the Prisoner, and say, Whether it was he that kill'd his Master.

And the Interpreters reported to the Court, That the Negro Boy said, That was the Man who kill'd his Master, and that he kill'd him with a Petard; that his Master fell down immediately, and did not speak a Word.

*Pres.* What say you, *Scudamore*?

*Scudamore.* I did not kill the Captain of the Portuguese Ship.

*Pres.* Where is your Gold?

*Scudamore.* I can't tell: What I said upon my first Examination about it, is false.

*Pres.* Have you any thing farther to say?

*Scudamore.* No.

After this, a Petition was given into Court, signed by several of the Prisoners, viz. *William Wilde, John Dorothy, Dennis Carter, Peter Roach, Francis King, John Pitman, Richard Lawrence, Benjamin Perkins, Erasmus Peterson, John Carter, Nicholas Richardson, John King, James Austin, William Jones, and Charles King:* Praying that they might withdraw their several Pleas of Not Guilty, and be admitted to confess and plead Guilty, hoping thereupon for the Queen's Mercy, &c.

Upon which they were each of them ask'd, Whether they set their Hands to that Petition? And they all severally own'd they did.

*Pres.* You who have here subscrib'd this Petition, must be told, That your Commander, and some others of your Company, have had their Trials, and are found Guilty: We don't take your pleading Guilty now, to be any Submission, nor will it of itself entitle you to Mercy. This Court can make no Bargain with you: If any of you can be distinguish'd, as being forced away, professing against the Voyage, Sickness, or the like, This Court will consider of it, so far as is proper for them.

*Mr. Register,* You must ask each of the Prisoners, one by one, Whether they are Guilty, or Not Guilty, of what they are charged with.

*Register.* How say you, *Richard Lawrence,* Are you Guilty, or Not Guilty?

*Richard Lawrence.* Guilty.

So said *Erasmus Peterson, John Carter, Francis King, Peter Roach, &c.* the rest of the Petitioners.

After this, *John Miller* was set to the Bar.

And the Queen's Witnesses being examined about *John Miller*, made Oath, That he was on board the Brigantine *Charles* during the Voyage, and did not protest against going upon the Coast of *Brasil*; that he was in Health, and Serviceable at the Time of every Caption, as the rest were; and had his Share of the Gold, &c. that was taken.

*Miller.* Saying he was sick some Part of the Voyage.

*Witnesses.* He was so, but was well again before we made our first Caption. (Article 4th read.) He was at this Caption well in Health, and consenting to it, so at the 5th and 6th Articles, and at the taking of the Prize in the 7th Article. (Article 8th read.) He was then on board the Tender that took the Gold Vessel. (9th Article read.) He boarded that Ship with Sword and Pistol.

*Pres.* What have you to say for your self? You have heard what has been proved against you.

*Miller.* I was at the taking of the Ship, and a Bark; but did not know what they were, for they shew'd no Colours.

*Pres. Pimer,* Did you ever hear any of your Company say, as if *Miller* was one of *Avery's* Crew?

*Pimer.* I heard some of them say, they heard him say so himself; so said *Clifford*.

*Miller.* I was none of *Avery's* Company.

*Pres.* Set *John Templeton* to the Bar, which was done; and the Queen's Witnesses being Sworn, Deposed, That *John Templeton* was on board the Brigantine all their late Voyage, and that he did sometimes bear Arms, but being not above fifteen Years of Age, they allowed him but half a Share, which his Master was also to have: That he was for two Months together Cook on board the Tender, but being but a Boy, he had no Vote with the rest of the Company, but was ordered as every one pleased.

*Mr. Henry Francklyn* being Sworn, Deposeth, That the Prisoner at the Bar was his Servant, and that he put him on board the Brigantine *Charles*, as such, upon Captain *Plowman's* Request: That he saw his Boy the Sunday Evening after the Pirates came in, and that his Share of Gold was never

never in his own keeping, for that the Company would not trust him with it, but he received it for him.

*Pref.* *Templeton*, What have you to say?

*Templeton*. I have nothing to say, but that my Master sent me out, and I knew not whither we were going.

And after this, *William Whiting* was set to the Bar, and charged with the same Articles of Piracy, &c. who thereupon pleaded Not Guilty.

And *Pimer* and the rest of the Witnesses being examined concerning him, informed the Court, That from the first Time of their coming upon the Coast of *Brasil*, unto their coming Home, *Whiting* was sick, and never bore Arms, being utterly incapable of doing any thing.

*Pref.* Had he any Share?

*Witnesses*. He had sixteen Ounces allowed him by the Company; but they told him it was not for his Deferts, but out of their Generosity that they gave it him.

*Pref.* Did he express any Dissatisfaction at what was done?

*Witnesses*. No, not that I heard; but he was taken sick on the Beginning of *November*, and came very sick a-shore.

*S. Sewall*, Esq; *Whiting* upon his Examination told me, that he had been acquainted with Captain *Plowman* at *New-York*, and that it was out of Respect that he had for him, that he came hither, and went the Voyage.

*Mr. William Clark* Sworn.

Deposed, That Captain *Plowman* sent for *Mr. Colman* and himself, and recommended the Prisoner to them as a Person fit to be Clerk or Secretary on board the Ship, and to take an Account of all their Affairs; and that Captain *Plowman's* Letters to them were written by the Prisoner; and when he came ashore, he was in a very low Condition, but said, when he was able, he would do them all the Service he could.

*Pimer*. I know of his writing Letters from Captain *Plowman*.

*Pref.* Would you say any thing your self, *Whiting*?

*Whiting*. I never was in any Action, being sick all the while we were on the Coast of *Brasil*, and did not discover their Piracy when I came on Shore, because I was then very sick, and like to die.

The Court was ordered to be cleared, and then adjourn'd to Nine o'Clock next Morning.

*Wednesday, June 21, A. M.*

The Court being opened, and Proclamation made, *John Templeton* and *William Whiting* were set to the Bar.

*Pref.* *John Templeton*, This Court has considered your Case, and have been very indulgent to you in regard of your Youth, and have adjudg'd you to be Not Guilty.

And you also *William Whiting*, the Court has considered of your Case, and have adjudg'd you also to be Not Guilty. Upon which each of them upon their Knees thank'd the Court, &c.

After which, *Christopher Scudamore* and *John Miller* were set to the Bar.

*Pref.* *Scudamore* and *Miller*, upon hearing the Queen's Evidences against you, and your own Allegations for your selves: This Court doth adjudge you both to be Guilty of what you have

been charg'd with. What have you to say, why Sentence of Death should not pass against you?

*Scudamore*. I had no Hand in altering the Voyage, nor killing the *Portuguese* Captain.

*Miller*. I was never active after the Voyage was alter'd.

*Pref.* Attend to the Sentence of this Court against you.

Then Sentence was pronounced by the *President* of the Court, as the Law directs in Cases of Piracy, &c. against the said *Scudamore* and *Miller*.

*Ordered*, That all the rest of the Prisoners that pleaded Guilty, be brought to the Bar.

*Pref.* Set seven of them to the Bar.

Then *William Wilde*, *John Dorothy*, *Dennis Carter*, *Peter Roach*, *Francis King*, *John Pitman*, and *Richard Lawrence*, were set to the Bar.

*Pref.* You, and each of you, have been Arraigned upon several Articles of Piracy, &c. to which you have severally pleaded Guilty. What have you to say, why Sentence of Death should not pass upon you?

*Ans.* Nothing.

*Pref.* Then attend to the Sentence.

Then Sentence was pronounced by the *President* of the Court, as the Law directs in Cases of Piracy, &c. against the said seven Persons last named.

*Pref.* Set the rest to the Bar.

*Benjamin Perkins*, *Erasmus Peterson*, *John Carter*, *Nicholas Richardson*, *John King*, *James Austin*, *William Jones*, and *Charles King*, were set to the Bar.

*Pref.* You, and every of you, have been Arraign'd upon several Articles of Piracy, Robbery and Murder, unto which you, and each of you did plead Guilty. What have you to say, why Sentence of Death should not pass against you for the same?

*Ans.* We leave our selves to God Almighty.

*Pref.* Attend then to the Sentence.

Then Sentence was pronounced by the *President* of the Court, as the Law directs in Cases of Piracy, &c. against the eight Persons last named.

And then the Prisoners were all remanded to Prison, and the Officer charged to take great Care of them.

On *Friday, June 30, 1704*, *John Quelch*, *John Lambert*, *Christopher Scudamore*, *John Miller*, *Erasmus Peterson*, and *Peter Roach*, were Executed in *Charles River*, between *Broughton's Warehouse* and the Point.

An Account of the Behaviour, and last Dying Speeches, of the Six Pirates, that were Executed on *Charles River*, *Boston Side*, on *Friday June 30, 1704*, viz. *Captain John Quelch*, *John Lambert*, *Christopher Scudamore*, *John Miller*, *Erasmus Peterson*, and *Peter Roach*.

ON *Friday* the 30th of *June, 1704*, pursuant to Orders in the Dead Warrant, the aforesaid Pirates were guarded from the Prison in *Boston*, by forty Musketeers, Constables of the Town, the Provost-Marshal and his Officers, &c. with two Ministers, who took great Pains to prepare them for the last Article of their Lives. Being allowed to walk on Foot through the Town, to *Scarlet's Wharf*, where



the Silver Oar being carried before them, they went by Water to the Place of Execution, being crowded and thronged on all Sides with Multitudes of Spectators.

*At the Place of Execution, they then severally spoke as follows, viz.*

I. Captain *John Quelch*. The last Words he spoke to one of the Ministers at his going up the Stage, were, *I am not afraid of Death; I am not afraid of the Gallows; but I am afraid of what follows: I am afraid of a Great God, and a Judgment to come.* But he afterwards seemed to brave it out too much against that Fear; also when on the Stage, first he pulled off his Hat, and bowed to the Spectators, and not concerned, nor behaving himself so much like a dying Man as some would have done. The Ministers had, in the Way to his Execution, much desired him to glorify God at his Death, by bearing a due Testimony against the Sins that had ruined him, and for the Ways of Religion, which he had much neglected. Yet now being called upon to speak what he had to say, it was but thus much: *Gentlemen, 'Tis but little I have to speak: What I have to say is this, I desire to be informed for what I am here; I am condemned only upon Circumstances: I forgive all the World: So the Lord be merciful to my Soul.* When Lambert was warning the Spectators to beware of bad Company, *Quelch* joining, *They should also take Care how they brought Money into New-England, to be hanged for it.*

II. *John Lambert*. He appeared much hardened, and pleaded much on his Innocency: He desired all Men to beware of bad Company; he seemed in a great Agony near his Execution: He called much and frequently on CHRIST, for Pardon of Sin; that God Almighty would save his innocent Soul: He desired to forgive all the World: His last Words were, *Lord, forgive my Soul! Oh, receive me into Eternity! Blessed Name of CHRIST! Receive my Soul.*—

III. *Christopher Scudamore*. He appeared very Penitent since his Condemnation; was very diligent to improve his Time going to, and at the Place of Execution.

IV. *John Miller*. He seemed much concerned, and complained of a great Burden of Sins to answer for; expressing often, *Lord! What shall I do to be Saved?*

V. *Erasmus Peterson*. He cried of Injustice done him; and said, *It is very hard for so many Men's Lives to be taken away for a little Gold.* He often said, *His Peace was made with God; and his Soul would be with God;* yet extreme hard to forgive those, he said, *wronged him:* He told the Executioner, *He was a strong Man, and prayed to be put out of Misery as soon as possible.*

VI. *Peter Roach*. He seemed little concerned, and said but little, or nothing at all.

*Francis King* was also brought to the Place of Execution, but Reprieved.



LVI. *The Trials of Daniel Dammaree, a Waterman, Francis Willis, a Footman, and George Purchase, a Sheriff's Officer, for High Treason, in levying War in the Kingdom, against the Queen, under Pretence of pulling down Meeting-Houses.*  
9 Annæ, 1710.

[ *At the Sessions-House in the Old-Baily.* ]

*Die Martis, Decimo Octavo Die Aprilis, Anno Domini, 1710, Anno Annæ, Dei Gratia, Magnæ Britannie, Franciæ, & Hiberniæ Reginæ, &c. Nono.*

A BILL of Indictment for High Treason, in levying open War against Her Majesty, having been found Yesterday by the Grand Jury for the County of *Middlesex*, at *Hicks's-Hall*, against *Daniel Dammaree, Francis Willis,* and *George Purchase*, the Prisoners being in Custody of the Keeper of *Newgate*, the Court proceeded thus.

*Clerk of Arraigns.* Set *Daniel Dammaree* to the Bar.

*Which was done.*

*Cler. of Arr.* *Daniel Dammaree*, Hold up thy Hand.

*Which he did.*

You stand indicted, by the Name of *Daniel Dammaree*, late of the Parish of *St. Clement Danes*, in the County of *Middlesex*, Labourer; for that you, not having the Fear of God before your Eyes, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, the Love, and true, and due Obedience, which every true and faithful Subject of our Sovereign Lady *Anne*, by the Grace of God, of *Great-Britain, France,* and *Ireland*, Queen, Defender of the Faith, &c. towards our said Lady the Queen, should, and of Right ought to bear, wholly withdrawing, and conspiring, and with all your Strength intending, the Peace and common Tranquillity of this Kingdom of *Great Britain* to disturb; the First Day of *March*, in the Ninth Year of the Reign of our said Sovereign Lady the Queen, that now is, at the Parish of *St. Clement Danes* aforesaid, in

in the County of *Middlesex* aforesaid, falsely, unlawfully, devilishly, and traiterously, didst compass, imagine, and intend open War, Insurrection, and Rebellion, against our said Lady the Queen, within this Kingdom of *Great Britain*, to raise and levy: And your said Treasons, Compassings, Imaginations, and Intentions to fulfill and bring to effect, you the said *Daniel Dammarée*, afterwards, that is to say, the said First Day of *March*, in the Ninth Year aforesaid, in the said Parish of *St. Clement Danes*, in the County of *Middlesex* aforesaid, by Force and Arms, against our said Sovereign Lady the Queen, your Sovereign, and undoubted Liege Lady, with a great Multitude of Men, to the Jurors unknown, to the Number of Five Hundred Persons, arm'd and array'd in a warlike Manner, that is to say, with Colours flying, Swords, Clubs, and other Weapons, as well offensive as defensive, unlawfully, and traiterously being assembled, and gathered together, publick War against our said Lady the Queen, at the Parish aforesaid, in the County aforesaid, the Day and Year aforesaid, traiterously didst prepare, begin, and levy, against the Peace of our said Sovereign Lady the Queen, that now is, her Crown and Dignity, and against the Form of the Statute in that Case made and provided.

*Cler. of Arr.* How say you, *Daniel Dammarée*? Are you Guilty of the High Treason, for which you have been indicted, and are now arraign'd, or Not Guilty?

*Dammarée.* My Lord, I was so much in Liquor, that I do not know what I did.

*Mr. Serj. Richardson.* You must now plead either Guilty, or Not Guilty. If you plead Not Guilty, you will be put upon your Trial, and be heard fully in your Defence, by yourself, or Council.

*Cler. of Arr.* Are you Guilty, or Not Guilty?

*Damm.* Not Guilty.

*Cler. of Arr. Culpit,* How wilt thou be try'd?

*Damm.* By God and the Country.

*Cler. of Arr.* God send thee a good Deliverance.

*Then the Prisoner was taken away.*

*Cler. of Arr.* Set *Francis Willis* to the Bar.

*Which was done.*

*Cler. of Arr.* *Francis Willis*, hold up thy Hand.

*Which he did.*

You stand indicted by the Name of *Francis Willis*, late of the Parish of *St. Andrew Holborn*, in the County of *Middlesex*, Labourer; for that you, not having the Fear of God before your Eyes, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, the Love, and true, and due Obedience, which every true and faithful Subject of our Sovereign Lady *Anne*, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, Queen, Defender of the Faith, &c. towards our said Lady the Queen, should, and of Right ought to bear, wholly withdrawing, and conspiring, and with all your Strength intending, the Peace and common Tranquillity of this Kingdom of *Great Britain* to disturb; the First Day of *March*, in the Ninth Year of the Reign of our said Sovereign Lady the Queen, that now is, at the Parish of *St. Andrew Holborn* aforesaid, in the County of *Middlesex* aforesaid, falsely, unlawfully, devilishly, and traiterously didst compass, imagine, and intend open War, Insurrection, and Rebellion,

against our said Lady the Queen, within this Kingdom of *Great Britain*, to raise and levy; and your said Treasons, Compassings, Imaginations, and Intentions, to fulfill, and bring to effect, you the said *Francis Willis*, afterwards, that is to say, the said First Day of *March*, in the Ninth Year aforesaid, in the said Parish of *St. Andrew Holborn*, in the County of *Middlesex* aforesaid, by Force and Arms, against our said Sovereign Lady the Queen, your Sovereign and undoubted Liege Lady, with a great Multitude of Men, to the Jurors unknown, to the Number of Five Hundred Persons, arm'd and array'd in a warlike Manner, that is to say, with Colours flying, Swords, Clubs, and other Weapons, as well offensive as defensive, unlawfully, and traiterously being assembled, and gathered together, publick War against our said Lady the Queen, at the Parish aforesaid, in the County aforesaid, the Day and Year aforesaid, traiterously didst prepare, begin, and levy, against the Peace of our said Sovereign Lady the Queen, that now is, her Crown and Dignity, and against the Form of the Statute in that Case made and provided.

*Cler. of Arr.* How say you, *Francis Willis*? Are you Guilty of the High Treason, whereof you are indicted, and for which you are now arraign'd, or Not Guilty?

*Willis.* I am entirely innocent.

*Mr. Serj. Richardson.* Then plead Not Guilty; and if upon Trial you appear to be innocent, you will be acquitted.

*Cler. of Arr.* Are you Guilty, or Not Guilty? You must use the Words.

*Willis.* Not Guilty.

*Cler. of Arr. Culpit,* How wilt thou be try'd?

*Cler. of Newgate.* You must say, By God and your Country.

*Willis.* By God and the Country.

*Cler. of Arr.* God send you a good Deliverance.

*Then he was taken from the Bar.*

*Cler. of Arr.* Set *George Purchase* to the Bar.

*Which was done.*

*Cler. of Arr.* *George Purchase*, hold up thy Hand.

*Which he did.*

You stand indicted by the Name of *George Purchase*, late of the Parish of *St. Giles in the Fields*, in the County of *Middlesex*, Labourer; for that you, not having the Fear of God before your Eyes, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, the Love, and true and due Obedience, which every true and faithful Subject of our Sovereign Lady *Anne*, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, Queen, Defender of the Faith, &c. towards our said Lady the Queen, should, and of Right ought to bear, wholly withdrawing, and conspiring, and with all your Strength intending, the Peace and common Tranquillity of this Kingdom of *Great Britain* to disturb; the First Day of *March*, in the Ninth Year of the Reign of our said Sovereign Lady the Queen, that now is, at the Parish of *St. Giles in the Fields* aforesaid, in the County of *Middlesex* aforesaid, falsely, unlawfully, devilishly, and traiterously, didst compass, imagine, and intend open War, Insurrection, and Rebellion, against our said Lady the Queen, within this Kingdom of *Great Britain*, to raise and levy; and your said Treasons, Compassings,



passings, Imaginations, and Intentions, to fulfill, and bring to effect, you the said *George Purchase*, afterwards, that is to say, the said First Day of *March*, in the Ninth Year aforesaid, in the said Parish of *St. Giles in the Fields*, in the County of *Middlesex* aforesaid, by Force and Arms, against our said Sovereign Lady the Queen, your Sovereign, and undoubted Liege Lady, with a great Multitude of Men, to the Jurors unknown, to the Number of Five Hundred Persons, arm'd, and array'd in a warlike Manner, that is to say, with Colours flying, Swords, Clubs, and other Weapons, as well offensive as defensive, unlawfully and traiterously being assembled and gathered together, publick War against our said Lady the Queen, at the Parish aforesaid, in the County aforesaid, the Day and Year aforesaid, traiterously didst prepare, begin and levy, against the Peace of our said Sovereign Lady the Queen that now is, Her Crown and Dignity, and against the Form of the Statute in that Case made and provided.

*Cler. of Arr.* How say you, *George Purchase*? Are you Guilty of the High Treason for which you have been indicted, and are now arraign'd, or Not Guilty?

*Purc.* Not Guilty.

*Cler. of Arr.* *Culprit*, How wilt thou be try'd?

*Purc.* By God and the Country.

*Cler. of Arr.* God send thee a good Deliverance.

*Then he was taken away, and the Court adjourn'd to the Day following.*

*Die Mercurii, 19 Aprilis, 1710, 9 Annæ.*

*Domina Regina versus Dammaree.*

### P R E S E N T,

The Right Hon. Sir *Samuel Garrard*, Bart. Lord Mayor of the City of *London*; the Right Hon. Sir *Thomas Parker*, Knt. Lord Chief Justice of Her Majesty's Court of Queen's Bench; the Right Hon. Sir *Edward Ward*, Knt. Lord Chief Baron of Her Majesty's Court of Exchequer; the Hon. *Robert Tracy*, Esq; One of the Judges of the Court of Common Pleas; the Hon. Sir *Thomas Bury*, Knt. One of the Barons of the Exchequer, and a numerous Company of the Nobility, and Persons of Quality and Distinction.

*Cler. of Arr.* Cryer, make Proclamation.

*Cryer.* O Yes.

*Cler. of Arr.* Again, again.

*Cryer.* O Yes, O Yes. All manner of Persons that have any thing more to do at this General Sessions of the Peace, Sessions of Oyer and Terminer, holden for the City of *London*, and Goal Delivery of *Newgate*, holden for the City of *London* and County of *Middlesex*, and adjourned over to this Day, Draw near, and give your Attendance, for now the Court will proceed to the Pleas of the same City and County.

God Save the Queen.

*Cler. of Arr.* *Middlesex* Cryer, make Proclamation.

*Cryer.* O Yes, O Yes. You good Men of the County of *Middlesex*, Summon'd to appear here this Day, to try between our Sovereign Lady the Queen, and the Prisoners that shall be at the Bar, answer to your Names as you shall be call'd, every Man at the first Call, upon Pain and Peril shall fall thereon.

*Then the Jury that were return'd on the Pannels were all call'd over, and the Appearances of all those that answer'd to the Call, were recorded.*

*Cler. of Arr.* Set *Daniel Dammaree* to the Bar.

*Which was done.*

*Cler. of Arr.* *Daniel Dammaree*, Hold up thy Hand.

*Which he did.*

*Cler. of Arr.* You the Prisoner at the Bar, these good Men, whom you shall hear call'd, and do now personally appear, are to pass between our Sovereign Lady the Queen and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to speak to them as they come to the Book to be Sworn, and before they be Sworn.

*Cler. of Arr.* Call Sir *Edward Gould*, Knt.

*Officer.* Here he is, Sir.

*Cler. of Arr.* To the Prisoner. There is Sir *Edward Gould*. Do you challenge him?

*Damm.* No, my Lord, I don't intend to make any Challenges.

*Cler. of Arr.* Then hold Sir *Edward Gould* the Book.

*Which was done.*

*Cler. of Arr.* Look upon the Prisoner.

You shall well and truly Try, and true Deliverance make between our Sovereign Lady the Queen, and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence. So help you God.

*Cler. of Arr.* *Richard Browne*, Esq;

*He was Sworn.*

The Prisoner making no Challenges, the following Gentlemen were Sworn.

### J U R Y.

Sir <i>Edward Gould</i> , Knt.	<i>Giles Riddle</i> ,
<i>Richard Browne</i> , Esq;	<i>Thomas Dodd</i> ,
<i>Peter Leigne</i> , Esq;	<i>Charles Williams</i> ,
<i>Robert Breedon</i> , Esq;	<i>Thomas Sutton</i> ,
<i>Charles Bateman</i> , Esq;	<i>Daniel Selman</i> ,
<i>Peter Lekeux</i> , Esq;	<i>John Collis</i> .

*Cler. of Arr.* Cryer, Count these.

Sir *Edward Gould*, Knt.

*Cryer.* One, and so of the rest.

*Cler. of Arr.* *John Collis*.

*Cryer.* Twelve good Men and true, stand together, and hear your Evidence.

Are you all Sworn, Gentlemen?

*Cler. of Arr.* Cryer, make Proclamation.

*Cryer.* O yes, If any one can inform my Lords the Queen's Justices, the Queen's Serjeant, the Queen's Attorney-General, or this Inquest now to be taken, of the High Treason of which the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance, and all others that are bound by Recognizance, to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance. And all Jurymen of *Middlesex* that have appear'd, and are not Sworn, may depart the Court for this Time, and give their Attendance here again to Morrow Morning.

*Cler. of Arr.* *Daniel Dammaree*, hold up thy Hand. *Which he did.*

Gentlemen

Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Daniel Dammaree*, late of the Parish of *St. Clement Danes*, in the County of *Middlesex*, Labourer, for that he not having the Fear of God before his Eyes, but being mov'd and seduc'd by the Instigation of the Devil, &c. (prout in the Indictment, mutatis mutandis,) against the Peace of our Sovereign Lady the Queen, her Crown and Dignity, and against the Form of the Statute in that Case made and provided. Upon this Indictment he has been arraign'd, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to inquire whether he be Guilty of the High Treason whereof he stands indicted, in Manner and Form as he stands indicted, or Not Guilty. If you find him Guilty, you are to inquire what Goods and Chattels, Lands and Tenements he had at the time of the High Treason committed, or at any time sithence. If you find him Not Guilty, you are to inquire whether he fled for it: If you find that he fled for it, you are to inquire of his Goods and Chattels, Lands and Tenements, as if you had found him Guilty. If you find him Not Guilty, nor that he fled for it, you are to say so, and no more, and hear your Evidence.

*Foreman of the Jury.* My Lord, here is such a great Noise in the Court, that unless a Stop be put to it, we shall not be able to hear the Council, or the Evidence: We humbly pray the Court may be kept quiet.

*L. C. J. Officer,* make Proclamation of Silence.

*Crier.* O Yes. My Lords, the Queen's Justices, strictly charge and command all manner of Persons to keep Silence upon Pain of Imprisonment.

*L. C. J. Gentlemen of the Queen's Council,* be pleas'd to proceed.

*Then William Thomson of the Middle-Temple, Esq; (afterwards Recorder of London, and Baron of the Exchequer,) of Council for the Queen, open'd the Indictment thus:*

*Mr. Thomson.* May it please your Lordship, and you Gentlemen of the Jury, *Daniel Dammaree*, the Prisoner at the Bar, stands indicted, for that he, not having the Fear of God before his Eyes, but being moved by the Instigation of the Devil, and designing to withdraw the Cordial Love and Natural Obedience, which true and faithful Subjects of our Sovereign Lady the Queen, do, and ought to bear towards Her, and intending to disturb the Peace and common Tranquillity of this Kingdom, on the first of *March* last, in the Parish of *St. Clement Danes*, in the County of *Middlesex*, traiterously compass'd and imagin'd to levy War, and stir up Rebellion and Insurrection against our said Lady the Queen within this Kingdom: And that he might accomplish his said Traiterous Imaginations and Designs, on the said first of *March*, and in the said Parish being assembled, with a Multitude and great Number of People armed, and arrayed in a Warlike Manner, he did then and there unlawfully, and traiterously levy War against our said Lady the Queen, contrary to the Duty of his Allegiance, against the Peace of our said Lady the Queen, her Crown and Dignity.

To this Indictment he has pleaded Not Guilty.

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Gentlemen, if the Evidence for the Queen prove the Charge, as laid in the Indictment, 'tis your Duty to find him Guilty.

*Mr. Att. Gen.* May it please your Lordships, and you Gentlemen of the Jury, the Record that has been open'd to you, is an Indictment of High Treason against the Prisoner at the Bar: It charges him with disturbing the General Peace and Quiet of the Realm, and inciting Rebellion within your County. The Crime that this Indictment is founded upon, has in all Ages and Countries been accounted the highest Crime that can be committed against any State, or Government. The Laws of *England* are very express, that if any Man takes himself to be aggrieved by any Law whatsoever, and endeavours by Force to seek Redress of those Grievances, or to get any Reformation of those Things he complains of, and this against the Civil Authority, it is levying of War, and is High Treason within the Statute of the 25th of *Edw. 3.*

That there has been an Insurrection within this County, not only in the Place mentioned in the Indictment, but in other Places, I believe is so well known to all here, that it would be mispending Time to call many Witnesses to that matter. But it will be incumbent on us, now the Prisoner stands on his Trial, to shew what particular Part he had in this Business; and therefore we shall call many Witnesses to prove what Part he had in this Affair: And if they give the same Account that they have given in their Informations, we shall make it appear that the Prisoner at the Bar was the Ring-Leader of those Tumultuous and Rebellious Persons, that assembled the first of *March* last; first to pull down the Meeting-Houses in the Neighbourhood, and after burning them, went on to pull down others.

The immediate Design which they pretended was, the pulling down the Meeting-Houses that is, those Places which are allowed to such as are unhappy enough to dissent from the Church of *England*, to meet in for their Religious Worship.

Whether *Mr. Burges* has given any Offence to the Prisoner, or whether any of the Congregation have given him any Offence, we shall hear from himself. But no Provocation can justify such Rebellious Tumults as were made on this Occasion: The Pretences that are mentioned, will not excuse what the Law makes High Treason.

It will be in vain for the Prisoner at the Bar, or any Person in his Circumstances, to pretend that he is a Friend to the Government, or a Loyal Subject, when his Actions shew he is guilty of High Treason. The Prisoner at the Bar stands doubly obliged to bear Faith and true Allegiance to Her Majesty, not only as all good Subjects are obliged to it, but as he is a Menial Servant to Her Majesty, for you will find that he was, at the time he committed this Treason, in Her own Cloth, wearing Her own Badge, whilst he was thus acting in Rebellion against Her.

That this tumultuous Meeting was not accidental, will appear, when the Witnesses shew, That some Days before this, there had been great Disorders in the Streets: And the Night before,

L 11

you



you will find by our Witnesses, that a great disorderly Tumult was in the *Temple*, and there it was resolved upon, by those tumultuous Persons, that the Night following, they would pull down Dr. *Burgeſs's* Meeting-House, and all the other Meeting-Houses thereabout. You will find, this was not only talk'd of, but put in Execution, by the Prisoner, and others with him: For, the First of *March*, they saw the Prisoner, and about Five Hundred others, with Staves, and Clubs, and other Weapons, in the Indictment mention'd, both offensive and defensive; there they were levying War, as the Law expounds it. And tho' the Darkneſs of the Night would otherwise have conceal'd him, yet the Fire they made in *Lincoln's-Inn-Fields*, with the Materials of that Meeting-House, did afford Light enough for the Witnesses to give an Account of the Prisoner: How he ſeemed more forward than all the others; and that he was not content with doing the Miſchief he design'd there, but afterwards, as Head of the Mob, commanded them to go and aſſiſt at another, and they went with him, through *Queen-Street*, to *Drury-Lane*, to another Fire, that was made by another Company.

We ſhall ſhew, that it was not only at theſe Two Places, but that it was a general Deſign, to pull down all the Meeting-Houſes at that time. And when we have made out this General Intention, and that it was executed in this manner, we don't doubt, but you will all be ſenſible, that this Proſecution was very requiſite: For it is the Intereſt of every honeſt Man, to put an end to theſe Tumults and Diſorders, be their Opinions what they will. It is the Intereſt of all People (in order to enjoy what God has bleſſed them with, be it more, or leſs) to put an End to theſe Diſorders: For theſe are like the great Tumults of Waters, that bear down all before them. Wherever theſe Things are, all the Burglars and Robbers, and ſuch People, join with them to do Miſchief.

We will call our Witnesses, and give an Account of what relates to the Prisoner, and they will make it appear, that he was chiefly concern'd in this Inſurrection; and not only acted in *Lincoln's-Inn-Fields*, but in other Places.

Mr. *Soll. Gen.* My Lord, The Facts that have been open'd by Mr. Attorney, we take to be fully and plainly Rebellion, and High Treason: I ſhall not therefore trouble your Lordſhip with ſaying any thing more of the Facts, but only ſhortly ſtate the Courſe of our Evidence.

We ſhall ſhew, that there was a Deſign, the Day before theſe Meeting-Houſes were pull'd down, to pull them down: That the next Day, that Deſign was put in Execution: That the Prisoner was the moſt active among them, and took upon him to be the Leader, and Captain of the Mob, on that Occaſion. And, if this be made out, I hope it will give your Lordſhip, and the Jury, full Satisfaction, that he is Guilty of the Crime laid to his Charge in this Indictment.

Call *Thomas Tolboy.*

*Who was ſworn.*

Mr. *Att. Gen.* Pray give my Lord, and the Jury, an Account what you know of the Deſign and Intention of pulling down Meeting-Houſes, and when, and where it was.

Mr. *Tolboy.* My Lord, I was paſſing through the *Temple*, on *Tueſday* Night, where I ſaw a great Mob: I heard them conſult of demolishing the Meeting-Houſes the next Day.

Mr. *Att. Gen.* What Meeting-Houſes did they talk of?

Mr. *Tolboy.* 'Twas Mr. *Burgeſs's* in *Lincoln's-Inn-Fields*.

Mr. *Att. Gen.* Was you among them?

Mr. *Tolboy.* No; I was paſſing through the *Temple*, and heard them talking as I paſſ'd.

Mr. *Soll. Gen.* How many were there together, at that time?

Mr. *Tolboy.* I believe there were ſome Thouſands.

Mr. *Soll. Gen.* When were they to be pull'd down?

Mr. *Tolboy.* Some were for pulling of them down then, and ſome were for leaving of them 'till the next Night, and others were for leaving of them alone, 'till the Event of Dr. *Sacheverell's* Trial.

Mr. *Soll. Gen.* What was the Occaſion of the Meeting of that Mob, that talk'd of this?

Mr. *Tolboy.* I don't know that.

Mr. *Soll. Gen.* Do you know that that Meeting-Houſe was pull'd down?

Mr. *Tolboy.* Yes, I know it was pull'd down.

Mr. *Soll. Gen.* Did you ſee it?

Mr. *Tolboy.* No, I did not ſee it, I only heard ſay ſo.

Mr. *Whittaker.* Did you ſee the Prisoner at the Bar in that Company, in the *Temple*?

Mr. *Tolboy.* No.

Mr. *Whittaker.* When you overheard them, were they talking low, or loud?

Mr. *Tolboy.* It was loud.

Mr. *Whittaker.* How came you not to give Information of it to ſome Magiſtrate?

Mr. *Tolboy.* It was known before; they had broke the Windows the Night before.

Mr. *Darnell.* Do you know any particular Perſon, that expreſs'd himſelf for pulling down the Meeting-Houſes?

Mr. *Tolboy.* No.

Mr. *Darnell.* Who then did you hear ſay there was ſuch a Deſign?

Mr. *Tolboy.* I heard ſeveral.

Mr. *Darnell.* Then you don't know any one?

Mr. *Tolboy.* No.

Mr. *Darnell.* Then you only expreſs yourſelf, that you heard the Mob ſay ſo?

Mr. *Att. Gen.* We don't call this Witneſs to ſpeak in particular againſt the Prisoner, but to ſhew, that theſe People reſolved among themſelves, to pull down the Meeting-Houſes.

L. C. J. You ſay you was paſſing through; You did not make any long Stay, did you?

Mr. *Tolboy.* No, my Lord.

L. C. J. Were they come to a Concluſion of the Diſcourſe of pulling them down? Or did you leave them talking of it?

Mr. *Tolboy.* I left them talking of it?

Mr. *Soll. Gen.* He ſaid there was an Intimation of it on *Monday* Night, I deſire to know how he knew or heard of it?

Mr. *Tolboy.* You know the Windows were broke on *Monday* Night.

Mr. *Soll. Gen.* Did you ſee them?

Mr. *Tolboy.* No, but I heard ſo.

Mr. *Soll. Gen.* Who told you ſo?

Mr.

Mr. Tolbo. It was a Man that lives in the House with me.

Lord Chief Baron. What were they met about?

Mr. Tolbo. They were the Mob that accompanied Dr. Sacheverel home to the Temple.

Then Captain Edward Orrel was sworn.

Mr. Att. Gen. Pray look on the Prisoner at the Bar, and give an Account of all you know of this Riot, and how he was concern'd in it.

Capt. Orrel. My Lord, I heard there were several Disturbances on Monday Night: On Tuesday Night I was at a Coffee-House, where there were several House-keepers: When I was there, there was News brought, that they had pulled down Mr. Burges's Meeting-House.

Mr. Att. Gen. Who?

Capt. Orrel. The Mob that came with Dr. Sacheverel. Pray, says I to Mr. Leonard, who keeps the Coffee-House, (he is one of that Congregation,) pray step up, and see the Truth of it, and whether you can do him any Service: You will find his Son, and, perhaps, he will put you into a Way to put a Stop to it. He went up to Mr. Burges's, and found that they had broke the Windows of his House, and Meeting-House, and after they had done that, they went off. From thence, he went to Mr. Burges's Son, and, I suppose, he went to the Secretary of State. On Wednesday, I went to Westminster-Hall, with some Neighbours, and went into Oliver's Coffee-House, where I stay'd some time, and afterwards saw Her Majesty return through the Park, to St. James's. There were several Papers dispers'd about a Prize-Fighting; I thought they had been the common Papers that are dispers'd about such Prizes, but I found, it was about a Prize between Sacheverel, and Hoadly. When I return'd, I went to the same Coffee-House, and when I had been there about half an Hour, heard that the Mob were gone from the Temple, to Mr. Burges's Meeting; says I, to some of my Friends there, I will stay no longer here; the least we can do, is to endeavour to keep the Peace: I will go up, and see what is doing. Accordingly I went, and one Friend with me: I went to the House, to offer to do him what Service I could, though I don't belong to him. When we came first, my Friend was fearful: Said I, I will go into the Meeting-House. I met several that assaulted me, and made me pull off my Hat. When I came into the Meeting-House, I saw them pulling it down; several Gentlemen, in very good Habits, I believe Twenty or Thirty, were busy in pulling down the Pews; and I observed a little Man in the Pulpit, very busy, pulling it down: I took particular Notice of him, but could not see him among the Prisoners that have been taken. I came out, and told my Friend, that it was all destroy'd. We staid a little while at the Corner of the Street, and then I went in again: I went in several times, 'till some of them, that were pulling up the Boards, swore at me, and said, Damn him, What does that lazy Fellow do? And, I believe, they took me for a Spy. I went again to the Coffee-House, and gave this Account to my Neighbours, and presently News was brought, that they were gone to several other Meetings. We went out again, and went round by Fetter-Lane. I saw the Constable and the Watch were very much insulted. I spoke to the Constable: He said, I wish I could do any

Service; but we have our Lives in their Hands; we dare not do any more, we have been so much abused. I went into Holborn, and saw the Fire lighted, and went round at a distance, and saw several Pieces of Timber thrown into it. From thence we went again to Lincoln's-Inn-Fields; there I heard some asking, Which was the Lord Wharton's House? Others said, St. James's; No, said others, the City, the City, the Bank: Damn them, says another, we will have all the Meeting-Houses down. We walk'd down that Row, where Sir Francis Child's Son's House is, and went towards my Lord Chancellor's House: I saw a Chariot standing at his Door; said I to my Friend, I believe here is somebody from Court, I hope there will be some Guards come down by and by. When I was there, I halted a little, and observed a small Body of the Mob detach'd from that Fire; they run after one another, cross the Fields: I observed a pretty tall Man at the Head of them; I kept my Eye on that Party. In the middle of the Field, they grew stronger, and then they divided themselves; some went towards the Arch, but more towards Powis House: I went towards those at Powis House, and there I saw Dammarée in the Queen's Livery, with his Badge; and there they held a Council of the Mob, as I call'd it. God damn it, says Dammarée, we will have them all down. Some were for going into Wild-Street; Damn it, says another, that's a Hen-Roost, the other is worth Ten of it: Says Dammarée, I'll lead you on, Boys; Huzza! High-Church, and Sacheverel! God damn them all, we will have them all down. Some of them turn'd off towards Wild-Street, and others towards Powis House. Dammarée, and the Mob with him, went through Queen-Street, and once in Ten or Twelve Yards, he turn'd about, Huzza! Why don't you come on, Boys, to Drury-Lane? God damn them, we will have them all down. I call'd to him, and said, How now, Dammarée? He turn'd about, Huzza! Come along, Boys: But he made me no Answer. In this Manner, he led them on from Lincoln's-Inn-Fields to Drury-Lane, but I never saw him afterwards. By and by comes a little Fellow, I'll make way, says he; and, with a Pick-Ax, which he had in his Hand, endeavour'd to break open the Meeting-House Door, and was working with it at the Bottom. Afterwards, while he was working at the Door, comes another Man, one Henry Sanders, about my Size, or a little higher; he had a Hatchet in his Hand: He comes up, and swears, God damn you, you break open a Meeting-House! You don't know how to do it; and, with the second or third Stroke, he broke thorough. I stood close by him, laid my Hands upon him, and looked upon him, while he broke open the Door, and made the best Remarks I could of him: I have seen most of the Prisoners, but could not find him among them; but, at last, was inform'd, that he was Apprentice to one Wallis, a Sawyer, in Parker's-Lane.

Mr. Att. Gen. It is no matter to give an account of him: I ask, When they had broke open the Door, what did they do next?

Capt. Orrel. I went into the Meeting-House with them, and ask'd, Where is Jolly, the Queen's Waterman? Says one, He is gone to the Back-Door: No, says another, he is gone to my Lord Wharton's. But I never saw Dammarée after that.

Mr.



Mr. *Soll. Gen.* You say, he led them from the Fire at *Lincoln's-Inn-Fields*.

Capt. *Orrel.* I observed him first there, but did not know him, 'till they came near the Arch, and there they consulted together, which way to go, and by that time they came to *Drury-Lane*, I believe there were two or three Thousand of them.

Mr. *Att. Gen.* At *Drury-Lane*, you say, there was a Tumult of two or three Thousand; pray observe the Prisoner, and tell us, whether you are sure, that he is the Man that headed the Mob at the Arch in *Lincoln's-Inn-Fields*, and led them to *Drury-Lane*.

Capt. *Orrel.* Yes, he is.

Mr. *Soll. Gen.* What happened afterwards? Did any Guards come? And was there any Opposition given to them? Or did they disperse themselves?

Capt. *Orrel.* My Lord, I was in *Drury-Lane* half an Hour, and more. My Friend had been some time in a House, and after we had heard all this Noise, Well, says I, I will go to my Neighbours, at the Coffee-House, and acquaint them what has happened. As we were going into *Lincoln's-Inn-Fields*, we met a Detachment of the Horse-Guards: I went up to the Captain, Sir, says I, this is the best Way, through the Arch, for there is a very great Mob: I run back along with them. As soon as they came, they halted at *Great Queen-Street*. There came another Detachment of the Horse-Grenadiers, and met them, and both join'd. After they had drawn themselves up in one Line, the Officer commanded them to ride among the Mob, and disperse them, which they did, but were very favourable, and struck them with the Flats of their Swords. After this, a Fellow drew his Sword, and got under a Bulk; I stepp'd up to him, and as soon as I came up, Sir, says I, What the Devil are you doing? I saw two or three Grenadiers strike him with the Flats of their Swords: He stood with his drawn Sword, and prick'd at two or three Horses, not so as to do them any Harm.

Mr. *Soll. Gen.* Don't go into the Particulars relating to that Man, but tell us, Did you see any other Tumult?

Capt. *Orrel.* I went down with the Grenadiers and Life-Guard to *Black-Friers*.

Mr. *Soll. Gen.* Was any Opposition given to the Guards at *Drury-Lane*?

Capt. *Orrel.* None by *Dammaree*, nor to the Horse-Guards, as I saw.

Mr. *Soll. Gen.* Was there any to the Grenadiers?

Capt. *Orrel.* There was Opposition; for I saw a Sword drawn, and the Officer assaulted, and he swore God damn them, he would fight the best of them.

Mr. *Soll. Gen.* Do you know of any other Meeting-Houses that were pulled down that Night?

Capt. *Orrel.* I went to the Guards, and told them that I heard some of the Mob were gone into the City; some said to the *Bank*; some said to Mr. *Showers*'s, and others said to other Places. I went to them, Gentlemen, says I, it is better to have all the Meeting-Houses destroyed than the *Bank*, pray let us go thither: I went along with them down *Holborn*, and brought them up *Fleet-Lane*; there I heard they were not gone to

the *Bank*, but that they were gone to *Black-Friers*: I shewed them the Way, and went down with them almost to the Meeting-House, and shewed them where it was.

Mr. *Soll. Gen.* Was that Meeting-House pull'd down?

Capt. *Orrel.* It was then pulling down, but it was prevented by the Guards.

Mr. *Soll. Gen.* Then you speak as to Mr. *Burgefs*'s, and the Meetings in *Fetter-Lane*, *Drury-Lane*, and *Black-Friers*?

Capt. *Orrel.* I was at them all.

Mr. *Whittaker.* Pray, What Time of Night was it, that you saw Mr. *Dammaree*?

Capt. *Orrel.* I can't be positive, but I believe it was about half an Hour after Ten.

Mr. *Whittaker.* Pray, In what Condition was he?

Capt. *Orrel.* I did not much observe it; I believe he had been drinking, he look'd flush'd.

Mr. *Darnell.* I think you say, you was in Mr. *Burgefs*'s Meeting-House, and saw several there pulling it down; Now, did you see *Dammaree* there?

Capt. *Orrel.* No.

Mr. *Darnell.* Did you see *Dammaree*, 'till you came to the Fire?

Capt. *Orrel.* No, nor at the Fire.

Mr. *Darnell.* Did you see him at the Meeting-House in *Drury-Lane*?

Capt. *Orrel.* No; nor did I see him after he had brought up that Party through *Queen-Street*: But I believe him to be the chief Person that led them from *Lincoln's-Inn-Fields* to *Drury-Lane*.

*Damm.* When I was in Goal, you ask'd me, Whether I was the Waterman? Yes, I am, said I, Do you know me? If you are the Waterman, said you, I do.

L. C. J. If you have a mind to ask him any Questions, you may.

*Damm.* I desire to ask him, Whether he saw me in any of the Meeting-Houses?

Capt. *Orrel.* I said before, I did not. My Lord *Sunderland* desired me to see the Prisoners in *Newgate*; I did so: When I came, they were in a dark Hole. I desired to speak with *Dammaree* and *Purchase*, and as soon as we went into a lighter Room, I knew them both.

*Then Joseph Collier was sworn.*

Mr. *Soll. Gen.* Do you know the Prisoner at the Bar? Tell us, whether you ever saw him before, and where.

J. *Collier.* My Lord, I saw him at the Fire, at *Lincoln's-Inn-Fields*.

Mr. *Soll. Gen.* What Time?

J. *Coll.* About Eight or Nine o'Clock.

Mr. *Soll. Gen.* What Day?

J. *Coll.* *Wednesday*, the First of *March* last; I saw him bring the Branch that holds the Candles.

Mr. *Soll. Gen.* Where had he it?

J. *Coll.* In Dr. *Burgefs*'s Meeting.

Mr. *Soll. Gen.* What did he do with it?

J. *Coll.* He went two or three Times round the Fire, and then threw it in.

Mr. *Soll. Gen.* What did he do besides?

J. *Coll.* He hollow'd, and threw up his Hat and Wig several Times.

Mr. *Att. Gen.* Where did you see him first?

J. *Coll.* In *Lincoln's-Inn-Fields*.

Mr. *Att. Gen.* Did you go into the Meeting-House?

J. *Coll.*

J. Coll. No.

Mr. Att. Gen. Where did you see him with the Branch?

J. Coll. Just at the End of the Alley.

Mr. Att. Gen. Did you see him come out of the Meeting-House?

J. Coll. I did.

Mr. Att. Gen. And you saw in his Hand the Branch?

J. Coll. Yes.

Mr. Att. Gen. Where did he carry it?

J. Coll. He carried it to the Fire.

Mr. Att. Gen. What did he do then?

J. Coll. He went about hollowing for *Sacbeverel*, and went round the Fire two or three Times, and then threw it in.

Mr. Soll. Gen. What was that Fire made of?

J. Coll. It was made before I came.

Mr. Soll. Gen. How long was he there?

J. Coll. I believe, two or three Hours.

Mr. Soll. Gen. When did he go away?

J. Coll. He went before the Guards, and led the Mob off, to *Drury-Lane*.

Mr. Soll. Gen. How do you know he led them off?

J. Coll. He said, Let us go to *Drury-Lane*, and he went with them, and I saw them go up *Great Queen-Street*.

Mr. Thomson. What Sort of Cloaths had the Prisoner that Night?

J. Coll. His Waterman's Coat, and Badge.

Mr. Soll. Gen. Who appeared to be the most active Man at the Fire?

J. Coll. The Waterman; he that stands there.

Mr. Thomson. Do you know of any thing else fetch'd by this Man, besides the Candlestick?

J. Coll. No.

Mr. Whittaker. What time of Night did you first see *Dammarée*?

J. Coll. I believe it was near Nine.

Mr. Whittaker. Will you be positive it was about that Time?

J. Coll. It was about Nine, or Ten.

Mr. Whittaker. Will you be positive it was before half an Hour after Ten?

J. Coll. I cannot be positive to half an Hour.

Mr. Whittaker. Was not the Meeting-House pull'd down, before you saw *Dammarée*?

J. Coll. Yes, there was a Fire before.

Mr. Whittaker. What Time was that?

J. Coll. It was about Nine.

Mr. Whittaker. If the Meeting-House was pulled down, Did not they take out the Candlestick at first, before they pulled it down?

J. Coll. No, there was a great Fire before they brought it away: I was not there at the Beginning.

Mr. Darnell. You say you came after the Fire was lighted, and there you saw *Dammarée*, but you did not go into the Meeting-House, How then can you say he was in the Meeting-House?

J. Coll. Because I stood at the End of the Alley, and saw him come out.

Mr. Darnell. Why, Were there any Lights there?

J. Coll. Yes; the Alley was very full of Lights, and the Meeting-House too.

Juryman. My Lord, I desire he may be ask'd, Whether he saw *Dammarée* bring that Branch out of the Meeting-House?

Mr. Att. Gen. What did you see him bring out of the Meeting-House?

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J. Coll. The Branch.

L. C. J. Could you see the Door of the Meeting-House, where you stood?

J. Coll. Yes.

L. C. J. Did you see him bring that Branch out of the Meeting-House?

J. Coll. Yes; and I saw him throw it into the Fire.

Mr. Darnell. Was you near the Door?

J. Coll. As near as I am to you.

Then John Still was sworn.

Mr. Att. Gen. Look upon the Prisoner, and see if you know him.

J. Still. Yes, I do know him.

Mr. Att. Gen. Where, and when did you see him?

J. Still. The Night that the Fire was, I saw him in the Alley, that leads to Mr. *Burgefs's* Meeting-House.

Mr. Att. Gen. Where was you?

J. Still. Just in the Alley.

Mr. Att. Gen. Where was he going, or from whence was he coming?

J. Still. They were all standing and hollowing.

Mr. Att. Gen. Did you see him do any thing more?

J. Still. No.

Mr. Att. Gen. What time was it?

J. Still. It was, as near as I can guess, about Eleven.

Mr. Soll. Gen. Was the Meeting-House down, or not?

J. Still. I can't tell; there was such a Crowd, I could not get to it.

Mr. Soll. Gen. Was you at the Fire?

J. Still. Yes, but I did not see him there.

Mr. Soll. Gen. Did you hear him say any thing?

J. Still. Nothing, but only hollow.

Then John Mitchell was sworn.

Mr. Soll. Gen. Was you at the Fire in *Lincoln's-Inn-Fields*, the First of *March* last?

J. Mitchell. Yes.

Mr. Soll. Gen. Do you know the Prisoner?

J. Mitchell. Yes.

Mr. Soll. Gen. Where did you see him?

J. Mitchell. I saw him that Night at the Fire.

Mr. Soll. Gen. What did he do there?

J. Mitchell. I only saw him run about the Fire, and hollow.

Mr. Soll. Gen. Where had they the Wood for that Fire?

J. Mitchell. From Dr. *Burgefs's* Meeting-Place.

Mr. Soll. Gen. Did you see any Wood brought from thence?

J. Mitchell. No; it was all laid there before I saw it.

Mr. Soll. Gen. Was you at the Meeting-House?

J. Mitchell. No.

Mr. Soll. Gen. Was you there when he went from the Fire?

J. Mitchell. No.

Mr. Att. Gen. What time was it that you saw him there?

J. Mitchell. About Eleven.

Mr. Soll. Gen. Pray, Who appear'd the most active Person there?

J. Mitchell. I don't know, they were all active.

Mr. Thomson. Did you hear him say any thing to the Mob?

M m m

J. Mitchell.



*J. Mitchell.* No; only hollow.

*L. C. J.* Did they force him to hollow, as he did?

*J. Mitchell.* No; there was no forcing of him.

*Mr. Soll. Gen.* Did he act as a Man that was forced to hollow? Or as one that did it willingly?

*J. Mitchell.* My Lord, he had no occasion to hollow, unless he would.

*Mr. Whittaker.* What time of Night was this?

*J. Mitchell.* About Eleven.

*Mr. Whittaker.* Was you there when the Mob went away to *Drury-Lane*?

*J. Mitchell.* No.

*Then Francis Morgan was sworn.*

*Mr. Att. Gen.* Pray look upon the Prisoner at the Bar, and tell us, if you know him.

*F. Morgan.* My Lord, the First of *March* last, at about Ten in the Evening, I heard there was a Tumult in the City: I live in *Southwark*, and I came over the Water, with another Person, to see what it was that occasioned it. I came to *Dr. Burgess's* Meeting-House, where I saw a great Number of Persons pull it down. After I had view'd them there a-while, I went to *Lincoln's-Inn-Fields*, and I saw them make a Bonfire; and there I saw this Man in the Queen's Livery, as a Waterman; he excited the Mob very much in their Proceedings, and I saw him pull off his Wig, and hollow, and seem'd mightily to be rejoiced: He went round the Fire, with several other Persons, that had Staves in their Hands. I did not see him have any, but he had his Wig in his Hand; he walk'd round the Fire with them, in Procession with a Bedstead that was going to be thrown in.

*Mr. Att. Gen.* You say, it was Ten o'Clock at Night, when you came there first; Was the Fire kindled then?

*F. Morgan.* Yes.

*Mr. Att. Gen.* Did you see *Dammaree* there, when you first came?

*F. Morgan.* I did see him: I did not then know his Name; but that is the Man. I took Notice of him, because of his Livery.

*Mr. Soll. Gen.* Where had they the Materials for that Fire?

*F. Morgan.* I saw a great many bring Wood from the Meeting-House: I said to some of them, Gentlemen, What are you doing? The Guards are coming: Said they, Damn the Guards, and the Parliament too; we are ready to face them all.

*Mr. Soll. Gen.* Why did they curse the Parliament?

*F. Morgan.* I don't know that.

*Mr. Soll. Gen.* Pray who seem'd to be the most active Man, and Inciter of them?

*F. Morgan.* The principal Man I observed, was the Prisoner at the Bar, whose Name I understand since to be *Dammaree*.

*Mr. Soll. Gen.* How long did you stay at the Fire?

*F. Morgan.* About Half a Quarter of an Hour, and then I heard them enquire where is the Fellow that said the Guards were coming; so I got away as fast as I could, for I came over the Water in my Night-Gown.

*Mr. Soll. Gen.* Was *Lincoln's-Inn-Fields* the only Place you came to?

*F. Morgan.* I saw no other Fire; I came to the Meeting-Place first, and saw them pull it down, and then went to the Fire, which was very great, and I saw the Prisoner encourage them in bringing Things to throw in: I saw him walk round the Fire, and several about him with Sticks in their Hands; but as to him, I observed none in his Hand.

*Mr. Att. Gen.* How many People do you think might be there at that Time?

*F. Morgan.* I believe Two Thousand.

*Damm.* What Time of Night was this?

*F. Morgan.* About Half an Hour after Ten, or Eleven.

*Damm.* Well, my Lord, I am very well satisfied.

*Mr. Thomson.* You say you saw a Procession before the Bedstead was thrown in: Did you see any Thing else that was thrown in?

*F. Morgan.* Yes, the Doors of the Meeting-House.

*Mr. Thomson.* Was there any Procession, or Hollowing before them?

*F. Morgan.* Yes, and I saw abundance of other Materials thrown in.

*Mr. Thomson.* Did they make the same Procession before all of them?

*F. Morgan.* No, not before all.

*Damm.* Did you see me throw any thing in?

*F. Morgan.* No.

*Juryman.* Did you apprehend him to be drunk, or sober?

*F. Morgan.* I did not apprehend him to be disguised in Drink: I took him to be rather a Madman, than any thing else.

*Juryman.* Did you see him with any of the Mob, between the Meeting-House and the Fire?

*F. Morgan.* The Mob was so large, as to extend from the Meeting-House to the Fire; there were great Numbers running to and again, but I saw him at the Fire.

*Then John Eaton was sworn.*

*Mr. Att. Gen.* Pray give an Account what you know of this Outrage, and of the Prisoner at the Bar.

*John Eaton.* I saw him at the Place where the Fire was.

*Mr. Soll. Gen.* Was you there at the making of the Fire?

*J. Eaton.* No.

*Mr. Soll. Gen.* What was the Fire made of?

*J. Eaton.* Of the Wood brought from the Meeting-House; I went to the Meeting-House with the Gentleman that was up before.

*Mr. Soll. Gen.* What did you see brought out?

*J. Eaton.* I saw a great many People bring out Pieces of Board.

*Mr. Soll. Gen.* Did you see the Prisoner bring any thing out?

*J. Eaton.* No, I only saw him at the Fire.

*Mr. Soll. Gen.* How did he behave himself there?

*J. Eaton.* Hollowing, as the rest of the Mob did.

*Mr. Soll. Gen.* What Ceremony did they use to the Timber before they threw it in?

*J. Eaton.* They hollowed when they threw it in.

*Mr. Soll. Gen.* Did they walk round the Fire with any?

*J. Eaton.* Yes, with the Bedstead.

*Mr. Soll.*

Mr. Soll. Gen. Who did appear to be the most active?

J. Eaton. There were many as active as he, but he was very active.

Mr. Soll. Gen. Pray what Condition was he in; drunk or sober?

J. Eaton. I am no Judge of that.

Mr. Att. Gen. There can be nothing in that; no Weight can be laid upon it.

Mr. Soll. Gen. There is nothing in it: If any one kills a Man when he is drunk, he must be hanged when he is sober.

Damm. I desire he may be asked what Time of Night it was.

J. Eaton. It was about half an Hour after Ten.

Mr. Soll. Gen. Did you see any Soldier there?

J. Eaton. Yes, one that look'd like a Soldier.

Mr. Soll. Gen. What pass'd between them?

J. Eaton. He, and some others, forced the Soldier to pull off his Hat.

Mr. Soll. Gen. Did you see Dammarée with them that forced him to pull off his Hat?

J. Eaton. Yes.

Mr. Soll. Gen. Did you stay till he went away, or did you leave him there?

J. Eaton. I left him there.

Mr. Thomson. Did you hear him say any thing to that Soldier?

J. Eaton. I heard him say, Pull off your Hat.

Mr. Darnell. You say you saw several Persons bring out Materials: How many might there be?

J. Eaton. I can't tell; but there were a great many.

Mr. Darnell. Did you see Dammarée bring any thing out?

J. Eaton. No.

Mr. Darnell. Where was he?

J. Eaton. I saw him first at the Fire, and I left him there.

Mr. Att. Gen. My Lord, there was a Question asked by the Council for the Prisoner, which we did not then oppose; but we must be in your Lordship's Judgment, whether it can have any Regard to the Merits of this Cause. For admitting he was drunk to that Degree they would have it, that is no Excuse of his Crime; I don't find they clear that Matter up: But if it be so, it is no Excuse for Felony or Treason. The only Question is, Whether he was not assisting in this Tumult.

L. C. J. It is almost necessary, that when a Man goes upon such Actions, he should be in drink; and I don't know but a little more Drink might have carried him to St. James's, to have pulled that down.

Mr. Att. Gen. My Lord, we have done with our Evidence for the Queen.

Mr. Whittaker. May it please your Lordship, and Gentlemen of the Jury, I am of Council for the Defendant: The Defendant stands accused of a very high Crime; it is Treason, and levying War against the Queen, under whose Government we are the happiest People in the World. And I agree with the Gentlemen that are of Council with Her Majesty, that a Prosecution of this Nature is very necessary, if these tumultuous Actions amount to levying War; and that no Tumults are to be born. But the Question is, What Share the Prisoner had in this Tumult? I agree these Tumults are not to be endured in any Civil Society, nor will any body, I believe, say, that those Methods are

to be taken with, or any Injuries whatever to be used to, the Dissenters. The Law is their Protection as much as of any other Subjects of this Kingdom: Ill Ways of Force and Violence towards the Dissenters, are unjustifiable, and these Ways are abominable; and no such vile and base Methods are to be used towards them. But that which we insist on, is, that the Prisoner had no Share of Guilt in the Action, and if so, then there will be no Colour to say, that he is guilty of a Riot, much less of levying War.

I beg leave just to state what has been sworn against him, and then apply myself to give it an Answer. The first Witness was only to prove that there was a Design, and that the Witness heard a Rumour among a great many People in the Temple, to pull down the Meeting-House of Mr. Burges's; but he did not see Dammarée there, nor is it proved that Mr. Dammarée was any ways priy thereto: And we shall shew that he was innocent of any such Design. The next Witness is Orrell: He speaks directly to the Prisoner at the Bar; but I would observe that he does not speak to him till half an Hour after Ten, when he finds him in *Lincoln's-Inn-Fields*, at the Fire of the Materials of Mr. Burges's Meeting-House. Indeed he does speak as to his having some Share in the Disorders of the Mob; but we shall shew that he was not a voluntary Agent in that Matter, and if so, that will sufficiently account for, and thereby we shall answer the Evidence given by him. The next is Collier: We will shew him to be under a gross Mistake, and that it is impossible that what he swears can be true: He confines himself to about Nine o'Clock, when this Action of carrying out the Branch, and throwing it into the Fire with such a formal Procession was. We shall shew where the Defendant was till half an Hour after Ten; and that it is impossible for him to have the least hand in plundering, or demolishing the Meeting-House: And if that be answered, we think it will go a great way towards clearing him of this Charge. The other Witnesses only speak to his being among the Rabble, hollowing amongst them: If we give an Account how the Prisoner came to be there, and that he was under a Necessity to do as he did, and that it was a perfect Accident, we hope the Imputation of any Crime for his being an Actor in this Matter, especially Treason, will not be laid to his Charge.

The Prisoner's Case was this: On *Wednesday* Morning he had occasion to apply to the Officers of the *Blue-Coat-Hospital* for a young Fellow that he had a mind to have for his Apprentice: He was with the Beadles from Ten in the Morning, till about Two o'Clock, and indeed he might have better employed his Time, for they were all that while at an Alehouse drinking. After this, he falls into Company with one Wood, with whom he continued at another Alehouse, till after Ten o'Clock at Night. As they were drinking, there came a Report that there was a Fire in the Strand. The Prisoner and the rest of the Company were surprized, and got up; says the Prisoner, there is a Lady I serve with Coals, that lives in the Strand, I must go and take care of her: He comes out of *Water-Lane* into *Fleet-Street*, and there he was stopped, and stood and talked some short Time, and finding there was no Fire in the Strand, he

was



was going strait home; he thought the *Strand* was a troublesome Place to go through then, and therefore chose to go the Backway. His Companion, Mr. *Wood*, went with him, but he being in a better Condition than *Dammaree*, he got rid of the Mob. But we shall prove that the Prisoner was under a Force, and by some of the Mob dragged into the midst of them: And you observe by the Witnesses against the Prisoner, that they treated every Body as Spies that did not join with them; and when he was in the Power of these unruly People, and acted under such Force, no one can say he was a Criminal. And there is no Pretence to say, that this Man was, over-night or at any time before, in any Design, or was acting with the tumultuous Persons the Night before, but by meer Accident came in among them at Night, on the first of *March*. If he did misbehave himself there, yet we hope the Court, and the Jury, will be of Opinion that he was not a criminal Actor in that Case.

If the Defendant should be so unfortunate to be look'd upon as a criminal Actor, yet we hope the Fact will not amount to more than a Riot, and not to levying War, nor be High Treason. I shall not take up your Lordship's Time at present in speaking to that Point, till we have called our Witnesses, when we see how the Matter then stands. If any Guilt should appear against him, or the Fact be doubtful whether he was a willing Agent in these Irregularities or no, the Question will then be proper, Whether it amounts to levying War, or not? We will call our Witnesses, and hope that *that* Point shall be reserved to us.

Mr. *Darnell*. My Lord, I beg a few Words on the same Side: As this Indictment charges the Prisoner with levying War, there must be a Proof of such Facts as do amount to a levying of War. The Witnesses for the Queen have sworn, that the Prisoner was at the Fire in *Lincoln's-Inn-Fields*, and that he there did hollow and throw up his Hat. I believe that must be agreed, for my Instructions are that he did so, and our Witnesses will all say as much. But if that were all, then the Witnesses against the Prisoner must be equally Guilty: For the Chief of them, *Orrell*, says, he was forced to pull off his Hat, and it was known to be the Practice of the Mob that Night, to make all that passed by pay Obedience, as they called it, to Dr. *Sacheverel*, and High Church. But, My Lord, that which I humbly offer on behalf of the Prisoner, is, that unless he were in the Intention of pulling down the Meeting-Houses in general, and did something in Execution of that general Intention, it will not be a levying of War against Her Majesty. My Lord, it is observed that this Man was at the Fire in his Coat and Badge, and we think a great deal may be infer'd from his Habit, that he was not in so evil an Intention, as levying War against Her Majesty, whose Servant he was so remarkably distinguish'd to be; but a Man who had such a vile Design to execute, would dress himself in such a manner as would best conceal him: Therefore we think his being present at the Fire, and hollowing, and the rest of the Evidence against him, is not enough to prove him in that general Intention, and the Execution of it.

The Gentlemen of the other Side thought it necessary to give some Evidence of a Design to pull down the Meeting-Houses in general; and for that purpose proved that a great Number of People were got together the Night before in the *Temple-Walks*, where there was a Discourse by some of them, that they would pull down Mr. *Burgefs's* Meeting-House; but who those People were, I don't hear, nor do they by any means bring that home to the Prisoner. And it is impossible for us to give an Answer to that Evidence, for to say the Mob said so, is to say that Nobody said so; and no Witnesses can be falsified on such an Evidence, for who that Mob were is not explain'd. And, my Lord, if there were no Intention, or no general Intention to pull down Meeting-Houses, we apprehend there can be no levying of War: if the Fact were sudden and accidental, or only intended against a particular Meeting-House, we must submit that to your Lordship, whether if he were Guilty of that Fact, it would amount to High Treason. We think all the Cases go on this Foundation, that there must be an Intention to commit such like Offence in general; and an Intention to commit it to the particular Injury of a Person, or Place, will not be sufficient. The Witnesses against the Prisoner say, there was an Intention, or Discourse of going to Mr. *Burgefs's* Meeting-House, and no Talk of any other; but when they were there, then they went to a second, and on to a third: But the original Intent by the Mob, doth not appear to be more than to go to Mr. *Burgefs's* Meeting-House, and to pull that down, and therefore is not a levying of War.

The Case in Print, in the second *Anderson*, 66. where the People in *Oxfordshire* conspire to assemble together, and move others to join them, and to pull down Inclosures, was attended with this Circumstance, that it was a general Intention; and when they were got together themselves, they perswaded others to join with them; they conspired to go to several Gentlemen's Houses, and to take Arms and Horses, and to kill several Gentlemen, and then to come to *London*; and their Intent was general, not to pull down any particular Inclosure, but all of them, for the Enlargement of Highways and Commons, and so to reform that which the Law ought to do.

So in the same Book, in the Case of the Apprentices of *London*, 2 *Anderson*, 4. 5. For reducing the Price of *Viſtals* in general, they agreed to break open the Prisons, to release some of their Companions, and to go to the Lord-Mayor's House, and to kill him, and burn his House, and then to break open two other Houses near the *Tower*, where there were Arms for three hundred Persons: Then to disperse Libels, and to perswade other People to join with them.

There is a later Case in my Lord Chief Justice *Keyling's* Reports, which was the Intention of pulling down Bawdy-Houses; there they took upon themselves Regal Authority, and would not take the Course the Law prescribed; but, my Lord, those Cases are attended with many worse Circumstances than this is, for there they assembled with Arms; there they had one they called *Captain* to lead them, with his Sword drawn;

drawn; they had Aprons, and such things on Staves, which they called Standards and Colours, and in a military Way they marched, and did pull down several Houses, which they called Bawdy-Houses: That Case is reported in my Lord Keyling's Reports, fol. 70. and was adjudged levying of War, because the Intent was general, and because they took upon themselves to do that which is the Business of the Queen, and the Laws of the Kingdom only to do. But my Lord, in that Case, there are two Persons who seem to have as great a Charge of Guilt upon them, as the Prisoner at the Bar, and were discharged from those Indictments for levying War, by the Opinion of all the Judges. One of them was found to be at the Meeting where the Discourse was of pulling down these Bawdy-Houses, that is *William Green*, that he went along with them, casting up his Cap, and hollowing, with a Staff in his Hand; but because there was not any particular Act of Force found to be committed by him, he was discharged. Another, one *Bedell*, was found among the Mob, and when the Guards came to disperse them, and he was pursued by one of the King's Soldiers, he called out to his Fellows to face about, and not to leave him. This we think is at least as strong an Evidence against them as has been given against the Prisoner at the Bar, and yet they were both discharged by the Opinion of all the Judges.

*L. C. J.* That was not because of a Defect in the Evidence, but the Imperfection of the Verdict. The Jury did not in their Verdict expressly find that they were aiding and assisting, and therefore the Court could not supply the Defect in the finding of the Jury.

*Mr. Darnell.* The Case in my Lord Keyling is thus: "The Jury find that a great Number of Persons, to the Number mentioned in the Indictment, armed as in the Indictment, did meet together in *Clerkenwell-Green*, in the County of *Middlesex*, on Pretence of breaking open Prisons, and releasing Prisoners; that one of them who had a Half-Pike in his Hand, owned himself to be their Captain: That they came so assembled together, to a Place there called the *New-Prison*, being a publick Prison of the County of *Middlesex*, and then and there said, That they came to search for Prisoners, and break open the Prison Doors, and let out four Prisoners, two whereof were committed thither for Felony, and two for other Offences; and that they being charged to depart, replied, They had been Servants long, but now they would be Masters; that some being taken, they cried, One die, and all die: That *Lattimer* was amongst them, and active in breaking of the Prison, and was with the rest in the Prison after it was broken open. And that *Bedell* was there, and being pursued by one of the King's Soldiers, called out to the rest of the Company to face about, and not to leave him."

My Lord, where a Fact is found, which Fact is an aiding and assisting, we think it cannot be a Defect in the finding of the Verdict, that he did not aid and assist. The Facts they found, were only Instances of aiding and assisting, and if these Instances will be sufficient, then the Court were as fully possessed of them as they are now upon this Evidence.

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My Lord, as to the Fact, we think we have a very good Case of it. We have Proof, every Hour of the Day, of the first of *March*, where the Prisoner was, from Morning till Night. That he was not at the Consult, the Night before, with the Mob, I think, is not pretended on the other Side. On the Day in the Indictment, we shall shew, he was, from Eight or Nine in the Morning, in the Company of several Persons, that we have here, until about Ten at Night, or later: That at that Hour, he was at an Alehouse in *Water-Lane*, in *Fleet-Street*, where a Gentleman's Servant came in, and told the Company, there was a Fire; the Prisoner started up, and thought it had been in the House, but finding it was not, he went into the Street, there it was reported, that *Mr. Burgess's* Meeting-House was pull'd down, and burnt. In about an Hour after that, he came along *Fleet-Street*, and at *Hercules-Pillars-Alley*, near the Temple, there was a Sempstress standing at her Door, with whom the Prisoner stay'd talking some Time, and whilst they were together, several People came by, and said, that *Burgess's* Meeting-House was quite down, and burnt: From thence, he went up *Chancery-Lane*, and through *Lincoln's-Inn-Fields*, to see what was the Matter, and found as it was reported, that it was all burnt. The Mob that were then about the Fire, laid hold of him, and used him as they did all other People that came by, and made him pull off his Hat, and hollow, High-Church and *Sacheverel*; if not, they must have a knock on the Pate. When they found he was much in drink, they push'd him about, and said, He should be their Captain, and then they hollow'd, and saluted him Captain; but nothing of this came from himself, but they gathered about him, and there their Captain was in the middle, more like to suffer, than command. My Lord, the Evidence against him don't pretend to charge him to be in *Drury-Lane*, only, that he went that way with them. Now, as to the Intention, which they would suppose the Prisoner had, of pulling down all the Meeting-Houses, I say, my Lord, a Man would not, from being a Captain, and from so great a Zeal to the Cause, desert his Companions, even in the first Instance in which he could serve them. For I submit it, whether there is any Evidence that he was in, or at any one of the Meeting-Houses, after the Fire in *Lincoln's-Inn-Fields*: And if he was so forward, as the Witnesses seem to charge him to have been, surely he would have gone to *Drury-Lane*, at least, and done some Act of his Authority, but that is not proved. And, my Lord, of our Side, we shall prove, that he did not go to *Drury-Lane*, but that, at Twelve o'Clock, he was in Bed, at his own House in *Lambeth*, so that there will be no Time to suppose him Guilty of doing any thing after his entering upon his Office, but only that he went off as soon as he could.

There was one of the Witnesses, my Lord, that said, he was in *Lincoln's-Inn-Fields* about Eight or Nine o'Clock, and saw the Prisoner there; now we shall shew, that half an Hour after Ten, he was engaged in Company, in *Water-Lane*: But there is a Circumstance in our Evidence, which we think, may reconcile that, for we can prove, that at *Dr. Burgess's* Meeting-House there was a Waterman, in his Livery and



Badge, who was busy in pulling down, and carrying away the Materials, but the Prisoner cannot be supposed to be the same, for that Person wore his own Hair, and the Prisoner has worn a Wig many Years; and, my Lord, if my Instructions are true, we have Persons that knew the Prisoner before, that will take it on their Oaths, that it was not *Dammarée*; if so, then the Witness that proves him to bring out the Branch, we hope, will be reconciled by this, that there was another Man in the same Habit. It is an easy thing for a Boy, in a Crowd, to make such a Mistake; for that was the Reason why he knew it to be *Dammarée*, because he had his Waterman's Coat and Badge on: That Man is not found out, but we hope we shall not stand in his Place.

My Lord, another Circumstance we have of the Innocence of the Prisoner, is, that the next Morning, when he got up, he went to his common Business, to work upon one of the Queen's Barges, and there, I think, he was, when the Messenger came to take him; he was not under the least Apprehension, that he had done any thing that would make him Guilty of a Crime, especially so great a one as this he is charged with; if he had, he would have taken some Care of himself, but his Innocence was all the Protection he made use of. We hope our Evidence will satisfy your Lordship and the Jury, that some of the Witnesses against him were mistaken, and ours will shew, that he withdrew from the Fire as soon as possibly he could; and we shall call some other Witnesses to shew that he is a Man of another Character, than to be Guilty of such an Offence. The Gentlemen of the other Side said, he was doubly obliged to bear Allegiance to Her Majesty; we own it, that he was Her Waterman, that he always behaved himself dutifully towards Her Majesty; that on other Occasions he has express'd his Abhorrence of any thing of this Nature. My Lord, if he is of a good Character, zealous for the Government, and has always express'd himself so, no Man, that is of that Character, can be Guilty of such a Crime, than which there can be none greater, to raise War against Her Majesty, in the Bowels of the Kingdom; and the Greatness of the Charge is that which, we hope, will make your Lordship and the Jury require the more exact Proof. We will call our Witnesses to make out our Case, and then submit it to your Lordship and the Jury.

*Then Thomas Allen was sworn.*

Mr. Whittaker. Do you know Mr. *Dammarée*?

T. Allen. Yes.

Mr. Whittaker. Was he with you the First of March last?

T. Allen. Yes.

Mr. Whittaker. At what Time?

T. Allen. About Ten o'Clock.

Mr. Whittaker. On what Occasion was he with you?

T. Allen. To have a 'Prentice out of *Christ's-Hospital*.

Mr. Whittaker. Was it Ten in the Morning, or in the Evening?

T. Allen. In the Morning.

Mr. Whittaker. How long did you stay together?

T. Allen. 'Till about Twelve.

Mr. Whittaker. Where did you leave him?

T. Allen. At a Publick House in *Grey-Friers*.

Mr. Whittaker. Who did you leave him in Company with?

T. Allen. There was one *Wood*, that went out of the House with him.

*Then Stephen Pink was sworn.*

Mr. Whittaker. Do you know *Dammarée*?

S. Pink. Yes.

Mr. Whittaker. Was you with him the First of March last?

S. Pink. Yes; on Wednesday, the First of March last.

Mr. Whittaker. About what Time of the Day did he come to you?

S. Pink. About Ten of the Clock in the Morning.

Mr. Whittaker. How long did he continue with you?

S. Pink. 'Till between Two and Three.

Mr. Whittaker. What Business was he about?

S. Pink. He came to the Hospital, on Account of taking a Boy to be his Apprentice.

Mr. Whittaker. What Time did you part with him? And where?

S. Pink. I left him at the Cock, at *Amen-Corner*, with Mr. *Wood*, between Two and Three o'Clock.

*Then S. Wood was sworn.*

Mr. Whittaker. Was you in Company with *Dammarée*, on the First of March last?

Wood. I was in Company with him, from Nine in the Morning 'till past Ten at Night.

Mr. Whittaker. How did you employ yourselves all that while?

Wood. We went from House to House; we were drinking from one Friend's House to another.

Mr. Whittaker. What was the last Alehouse you was at with him?

Wood. It was at the Bell, in *Water-Lane*.

Mr. Whittaker. What Time was it when you was there?

Wood. It was a Quarter after Ten.

Mr. Darnell. From the Time that *Pink* left you at *Amen-Corner*, was you in Company with him 'till a Quarter after Ten?

Wood. Yes, I was.

Mr. Darnell. Was he not out of your Company all that time?

Wood. No.

Mr. Darnell. I suppose you was not idle all that while; Was you drinking?

Wood. Yes; we were drinking all that time.

Mr. Whittaker. What News had you about a Fire?

Wood. There was one *John Light*, a Postillion, came in, and said, there was a great Fire, and all the Street was light. Mr. *Dammarée* starts up, says he, I have a Gentlewoman in the *Strand*, that is my Acquaintance, I must go and assist her.

Mr. Whittaker. Was there any Talk of the Fire being in the *Strand*?

Wood. Yes, in the *Strand*.

Mr. Darnell. Who told you it was there?

Wood. It was *John Light*.

Mr. Darnell. What did *Dammarée* do then?

Wood. He said, he must assist the Gentlewoman.

Mr. Darnell. What time did you come out of the Alehouse?

Wood. It was not Half an Hour after Ten.

Mr. Darnell. Did you come out of the Alehouse with him?

Wood. Yes.

Mr.

Mr. Darnell. Did you stop any where?

Wood. No where, as I know of. He was at *Temple-Bar*, making way to the Gentlewoman, and the Crowd forced him up *Sheer-Lane*, into *Lincoln's-Inn-Fields*; and when they saw his Badge, they said, Damn ye, you are the Queen's Waterman, you shall go with us.

Mr. Whittaker. Give an Account of what pass'd when he was there.

Wood. I saw him stand against the dead Wall, and they took hold of him, and said, Damn ye, you are the Queen's Waterman, you shall go with us, or we will tear you in Pieces.

Mr. Whittaker. Did he go willingly? Or what did he say?

Wood. He said, God blefs the Queen, Gentlemen, I'll do any thing you would have me, don't knock me on the Head.

Mr. Whittaker. Whereabout was this?

Wood. It was, I think, just by the Street they call *Duke-Street*.

Mr. Att. Gen. You say you was with him all this while, and came along with him, and at *Duke-Street*, you say —

Wood. At *Duke-Street*, I think they call it, as you go to *Turn-Stile*, just at the Wicket, as you go through *Lincoln's-Inn*.

Mr. Att. Gen. Where did they lay hold of him?

Wood. Just at *Lincoln's-Inn-Gate*.

Mr. Att. Gen. But I thought he had been pull'd by the Mob at *Temple-Bar*.

Wood. We were going to the Gentlewoman's House.

Mr. Att. Gen. Why, I thought she lived in the *Strand*; Was *Lincoln's-Inn-Fields* the Way to the *Strand*?

Wood. The Multitude of People forced him from *Fleet-Street* up *Sheer-Lane*.

Mr. Att. Gen. Where did you meet them at first?

Wood. He was going through *Temple-Bar* to the *Strand*, and they said, Here is the Fire; so we turn'd up the Lane; There was no passing through to the *Strand*, there was such a Crowd.

Mr. Att. Gen. But you found no Crowd afterwards, I suppose. Was the Press so great at *Temple-Bar*, that you was forced up *Sheer-Lane*?

Wood. Yes.

Mr. Att. Gen. You did not touch the Ground all the while, did you?

Wood. I saw them force him all the time.

Mr. Att. Gen. Did they force you too?

Wood. No, I went along.

Mr. Att. Gen. Was you forced up from *Temple-Bar* to *Lincoln's-Inn-Gate*?

Wood. Forced? No, Sir.

Mr. Att. Gen. Why, he is as big a Man as you, How came they to force him, and not you?

Wood. He was taken hold of by the Mob in *Duke-Street*.

Mr. Att. Gen. Now you say, the first Time he was touch'd by them was at *Duke-Street*; Can you say you was forced from *Temple-Bar* to *Lincoln's-Inn-Fields*?

Wood. Yes, we were forced by Violence.

Mr. Att. Gen. Was you forced for one?

Wood. Yes, we were forced among the Crowd of People.

Mr. Justice Tracy. You say you was carried in the Crowd from *Temple-Bar*, how far was you carried?

Wood. To *Duke-Street*.

Mr. Justice Tracy. Where is *Duke-Street*?

Wood. It is behind *Lincoln's-Inn*; you go through a little Wicket; it is where the Shopkeepers are.

Mr. Soll. Gen. Where is this which you call *Duke-Street*?

Wood. I am not well acquainted with the Streets.

Mr. Soll. Gen. How came you then to call it *Duke-Street*?

Wood. They tell me it is call'd so: It is a narrow Street, just behind *Lincoln's-Inn*. When you come through the Wicket, you must turn of the Right Hand, to go to *Turn-Stile*.

L. C. J. You say you went to *Temple-Bar*, to go into the *Strand*, and then you met so great a Press, that you could not go through. Where did you go then?

Wood. I went up *Sheer-Lane*.

L. C. J. Did the Crowd force you up?

Wood. Yes.

L. C. J. Did all that Crowd that you met at *Temple-Bar*, go up *Sheer-Lane*?

Wood. Some went one way, and some another.

L. C. J. Which Side of *Fleet-Street* was you, when you went to *Temple-Bar*?

Wood. On the Side next the *Temple*.

L. C. J. Then how came you to cross the Street, when there was such a Crowd, you could not get along?

Wood. They forced us along.

L. C. J. I ask you, if there was such a Crowd, that you could not get through, How could you get cross the Street to *Sheer-Lane*?

Wood. They all went that way.

L. C. J. Then you say, that all that Crowd that fill'd up the Street, so as to hinder your passing into the *Strand*, were all received into *Sheer-Lane*: When you was got up into *Sheer-Lane*, where did the Crowd carry you then?

Wood. Into *Lincoln's-Inn*.

L. C. J. When you was in the Square, Where did you go then? Did the Crowd carry you thro' the Wicket?

Wood. They forced as hard as ever they could force.

L. C. J. Then you say, when you was in the open Square, you could not avoid being carried by the Crowd through the Wicket. Confides what you say, you are on your Oath. How could you, when you was in the Square, be forced by the Crowd through the Wicket? In the next Place, Where did you get out from the Crowd, when you was got through the Wicket? How did you get from the Crowd?

Wood. I came down *Lincoln's-Inn*, into *Sheer-Lane*; there is a way that goes backwards, behind the Houses: I went away, and left them all.

L. C. J. When you left them, Where was *Dammarce*?

Wood. They forced him to the Fire.

L. C. J. Where did they lay hold of him?

Wood. It was at the dead Wall at *Duke-Street*.

L. C. J. Is that between the Wicket and the Fields?

Wood. Yes, it is opposite to the Wicket.

L. C. J. I ask, Was it between the Wicket and the Fields?

Wood. Yes, it was.

L. C. J. I thought you had not gone at all of the Right Hand towards the Fields, but that you turn'd down towards *Sheer-Lane*.

Wood. Yes, I did.



Wood. No, there was no getting that way, I went down into *Chancery-Lane*.

L. C. J. Now tell me, Which way did you get into *Chancery-Lane*, if you were at the Backside of *Lincoln's-Inn*, and did not go into the Fields? Is not the other way, the way to *Sbeer-Lane*?

Mr. Soll. Gen. How could you get into *Chancery-Lane*, without going by *Sbeer-Lane*, or into *Holborn*?

Wood. I went the Backway.

Mr. Soll. Gen. Then tell us which way did you go.

Wood. I turned on the Left-hand.

Mr. Soll. Gen. Where was you standing when you turned?

Wood. Just at the Wicket.

Mr. Soll. Gen. Did you go no further?

Wood. No, no further.

Mr. Soll. Gen. Then how could you see the Mob lay hold of him at the dead Wall? Pray tell us where, and in what manner you got from the Mob to go home?

Wood. I came down into *Fleet-Street*.

Mr. Soll. Gen. Where did you come into *Fleet-Street*?

Wood. Just against the lower *Temple-Gate*.

Mr. Soll. Gen. Which do you call the lower *Temple-Gate*, that next to the Bar, or the other?

Wood. I mean that next to *Fleet-Bridge*.

L. C. J. At that time might not *Dammaree* and you have gone away into *Chancery-Lane*, or where you would?

Wood. No, they took hold of him.

L. C. J. If they seized him in that place, whither did they take him; what did they do with him?

Wood. They took hold of him, and pulled him, and haled and forced him by Violence.

L. C. J. Well, did you see him afterwards? Did he not go along with you?

Wood. No, when I saw they laid hold on him, I left him.

L. C. J. Then you saw nothing of what passed in the Fields?

Wood. No; nothing of that.

L. C. J. Now you have been telling us that it was a Quarter after Ten when you parted from the Bell in *Water-Lane*: How came you to be so exact as to the Time? How could you, that had been drinking twelve Hours, be able to tell to a Quarter of an Hour what Time it was? What say you to it?

No Answer.

Mr. Whittaker. Do you know the Names of the Streets about *Lincoln's-Inn*?

Wood. I know the Street again.

L. C. J. He has described the Streets sufficiently; no Advantage must be taken of his mistaking the Name.

L. C. Baron. You speak of some that took hold of him; whereabouts was that?

Wood. At *Duke-Street*, behind *Lincoln's-Inn* Wicket.

L. C. Baron. You said, as soon as they laid Hands on him, you left him: Was it so or not?

Wood. Yes.

L. C. Baron. Then you say no more; you saw no more what was done by him, or with him, after that.

No Answer.

Then *Fucard* was sworn.

Mr. Whittaker. Did you see Mr. *Dammaree* on the first of *March* last?

*Fucard*. I keep the Bell Alehouse in *Water-Lane*; he came to my House about Two, and staid there till half an Hour after Ten.

Mr. Whittaker. Are you sure of that?

*Fucard*. I am sure of it.

L. C. J. Was he full of Drink then?

*Fucard*. Yes, full of Drink.

Mr. Darnell. Do you remember that any gave an Account of a Fire in the Strand?

*Fucard*. I know nothing of that.

Mr. Darnell. Do you know on what Occasion he went away?

*Fucard*. He went on no Occasion that I know of, but being in Drink.

Mr. Darnell. Did you hear any thing of a Fire?

*Fucard*. Nothing.

Mr. Att. Gen. Where do you live?

*Fucard*. At the Bell in *Water-Lane*.

Mr. Att. Gen. What Countryman are you?

*Fucard*. A German.

Mr. Att. Gen. Did you take any account when he went away?

*Fucard*. Yes, about half an Hour after Ten.

Mr. Att. Gen. How came you to take so particular Notice of the Time?

*Fucard*. I can't tell how it came.

Mr. Soll. Gen. Did no body come in and tell of a Fire?

*Fucard*. I heard nothing of it.

Then *Charles Bishop* was sworn.

Mr. Whittaker. Was you with *Dammaree* the first of *March* last?

C. Bishop. Yes.

Mr. Whittaker. How long did you stay with him?

C. Bishop. 'Till half an Hour after Ten.

Mr. Whittaker. Did any body bring any Account of a Fire?

C. Bishop. Yes, our Postillion.

Mr. Whittaker. What was done then?

C. Bishop. We staid an Hour after that.

Mr. Darnell. When was it that they brought the News of the Fire?

C. Bishop. It was half an Hour after Eight, or Nine.

Mr. Darnell. Pray give an Account what passed after?

C. Bishop. We had a Pound of Sausages, and smoaked a Pipe.

Mr. Whittaker. When he went away, on what Occasion did he say he would go?

C. Bishop. He said nothing of the Fire, but parted from me, and was much in Drink.

Mr. Darnell. How long did he stay after the Talk of the Fire?

C. Bishop. About an Hour.

Mr. Darnell. Did you leave him there, or did he leave you?

C. Bishop. He left me; I staid a while after, and I saw him afterwards in *Fleet-Street* talking with a Woman.

Mr. Darnell. Whereabout was that?

C. Bishop. Just by the *Green-Dragon* Tavern.

Mr. Darnell. Did you speak with them there?

C. Bishop. No; he was so much in Drink, that I did not care to speak with him.

Mr. Justice Tracy. Was *Wood* with him then?

C. Bishop. No; I did not see him.

L. C. J. Did *Wood* go with him from you?

C. Bishop. Yes.

L. C. J.

*L. C. J.* Do you remember that when the News was brought, he said there was a Gentlewoman in the Strand that he must take Care of?

*C. Bishop.* No; I do not remember it.

*Mr. Darnell.* Our Intent in calling this Witness, is to shew that he was at that House till half an Hour after Ten.

*L. C. J.* He says, the News was brought at half an Hour after Eight or Nine, and that they parted half an Hour after Ten; and when he is asked how long they staid after the News, he says, about an Hour.

*L. C. Baron.* How long did you sit after the News of the Fire?

*C. Bishop.* I can't exactly tell; but we staid 'till half an Hour after Ten.

*L. C. Baron.* When you saw him at the Tavern Door, was Wood with him?

*C. Bishop.* No.

*L. C. Baron.* Pray what time was it you saw him there.

*C. Bishop.* It was about three Quarters after Ten.

*Then John Light was sworn.*

*Mr. Whittaker.* Was you at the Bell Alehouse the First of March last, with Dammarce?

*J. Light.* Yes, I came in there.

*Mr. Whittaker.* At what time of Night?

*J. Light.* Between Eight and Nine o'Clock.

*Mr. Whittaker.* What Account did you bring of a Fire?

*J. Light.* I brought in the News.

*Mr. Whittaker.* How long did you tarry with him after that?

*J. Light.* I did not tarry at all; I came in for a Pint of Drink, and went away.

*Mr. Whittaker.* Was you not in his Company after that?

*J. Light.* I came into the House before they went away.

*Mr. Whittaker.* What time of Night was it when you came in the second time?

*J. Light.* About Ten o'Clock.

*Mr. Whittaker.* How long did they stay after that?

*J. Light.* 'Till between Ten and Eleven.

*Then Ward was sworn.*

*Mr. Whittaker.* Did you see Dammarce the First of March at Night?

*Ward.* Yes.

*Mr. Whittaker.* What time of Night was it?

*Ward.* Half an Hour after Ten.

*Mr. Whittaker.* Where did you see him?

*Ward.* I left him at this Gentlewoman's Shop.

*Mr. Whittaker.* Where does she live?

*Ward.* In Fleet-Street.

*Mr. Whittaker.* In what Condition was he when you saw him there?

*Ward.* He was drunk.

*Mr. Whittaker.* Did you see him do any thing indecent?

*Ward.* Yes, he reeled about, and asked what is the matter: We told him there was a Disturbance; says he, I hear there is a Fire.

*Mr. Whittaker.* What did he do after that?

*Ward.* I left him there.

*Mr. Whittaker.* Was any body with him?

*Ward.* No, none but himself.

*Mr. Darnell.* How long before had the Fire been?

*Ward.* A long time; there were forty People had come and said, that all the Inside of the Meeting was burned.

*Mr. Darnell.* How long before that?

*Ward.* I believe it might be an Hour before; about Eight o'Clock: I was going into the City, I saw a great many People, and they had the two Irons that bore up the Top of the Pulpit: What is the Matter, said I? Why, say they; those Men have the Bars that kept up the Top of Mr. Burges's Pulpit; and I knew them to be those Bars, for I have seen them often.

*Mr. Darnell.* Where was it that you saw them?

*Ward.* It was at St. Bride's Church.

*Mr. Darnell.* You say the Fire had been an Hour before you saw him in Fleet-Street.

*Ward.* Yes.

*L. C. Baron.* Who told you they were the Bars?

*Ward.* The People that flock'd after them.

*Then Mrs. Giles was sworn.*

*Mr. Whittaker.* Do you remember the Night that this Disturbance was, that you saw Mr. Dammarce?

*Mrs. Giles.* I saw him, I believe, about a Quarter after Ten; he stood and talked with me.

*Mr. Whittaker.* How long did he stay?

*Mrs. Giles.* Above a Quarter of an Hour.

*Mr. Whittaker.* How do you know it was that time?

*Mrs. Giles.* After he was gone, I did but lock up my Doors, and go up Stairs, and it struck Eleven.

*Mr. Whittaker.* What Condition was he in?

*Mrs. Giles.* Very drunk.

*Mr. Whittaker.* How long had the Fire been before that?

*Mrs. Giles.* A long time, some Hours: The People that went along, said, they had burnt the Inside of the Meeting. About Eight o'Clock they were burning it, and about Ten o'Clock they said it was all burnt.

*Mr. Justice Tracy.* Did you hear him talk of any Fire at a Friend's House in the Strand?

*Mrs. Giles.* He said nothing of that, but asked me if there was not a Fire: I said there was a Fire in Lincoln's-Inn-Fields.

*Mr. Sol. Gen.* Was any body with him?

*Mrs. Giles.* No body but himself.

*Mr. Att. Gen.* Was you acquainted with him?

*Mrs. Giles.* I never saw him before, that I know.

*Mr. Att. Gen.* Then you was an utter Stranger to him: How came he to be talking with you?

*Mrs. Giles.* I was standing at the Door with some others, and he came to us.

*Mr. Att. Gen.* Did he come to you on any Business?

*Mrs. Giles.* He came as he was walking along, and asked me, What was the matter?

*Mr. Att. Gen.* Had not you been asked that Question by a great many before?

*Mrs. Giles.* By a great many.

*Mr. Att. Gen.* Do you remember who asked you the Question before him?

*Mrs. Giles.* No.

*Mr. Att. Gen.* Then how came you to take more Notice of him than of others that asked the same Question?



Mrs. *Giles*. Because he stood a great while, and talked, and had the Queen's Coat on: He was very fuddled, and stood and talked with me, and that made me take notice of him.

Mr. *Att. Gen.* How came you to be subpoena'd?

Mrs. *Giles*. Because I had said to several Gentlemen, that there was such an one taken up; they said he was pulling down the Meeting-House: I said it was impossible, for that he was with me at that time, and came from the Citywards, and that made me inquire into it.

Mr. *Att. Gen.* Then you was sent to him, was you?

Mrs. *Giles*. No; I did not go, but a Gentlewoman in *Arundel-Street*, one Mrs. *Pinkney* did: I know nothing of him: But because I thought he could not be the Man, I was willing to clear him if I could.

Mr. *Whittaker*. How long have you lived where you now do?

Mrs. *Giles*. I have lived there twenty Years.

Mr. *Soll. Gen.* What did you talk about? He could not be a Quarter of an Hour asking that Question.

Mrs. *Giles*. No; but a great many came by, and asked, Who are you for; and what are you? And he said, You may see who I am for; I am for the Queen.

Mr. *Soll. Gen.* Then he did not talk with you so long.

Mrs. *Giles*. I was at the Door all the time, and he talked with me and others.

Damm. I desire to ask her, whether I said any thing of a Nurse-Child?

Mrs. *Giles*. He said he had nursed my Lord Mayor's Children.

Mr. *Att. Gen.* What else did you talk of?

Mrs. *Giles*. I advised him to go home, and I turn'd about and went in, and he said, Good Night, Mistress.

L. C. *Baron*. Did he talk sensibly?

Mrs. *Giles*. He talked as if he was drunk.

L. C. *Baron*. He gave an Account you say of nursing Children: How came that?

Mrs. *Giles*. I said to him, I wished my Lord Mayor would send out the Guards to quell the Mob: Says he, I nursed his Children; that was the Occasion of it.

Mr. *Darnell*. Did he say any thing of any other Nurse-Children?

Mrs. *Giles*. Yes; he said he nursed Sir *Richard Hoare's*; Did you nurse them, said I? Yes, says he, we did at home.

Mr. *Att. Gen.* Are you sure that is the Man?

Mrs. *Giles*. Yes; for I went to *Newgate* to see him.

Mr. *Thomson*. How came you to remember the Time so exactly?

Mrs. *Giles*. Because I had stood at the Door so long, and heard several go by, and say, 'twas such an Hour.

Mr. *Whittaker*. How near do you live from St. *Dunstan's* Clock?

Mrs. *Giles*. Just over-against it.

Mr. *Whittaker*. We will now call some Witnesses, to shew that he was under Force and Constraint.

Then Mr. *Cummins* was sworn.

Mr. *Darnell*. Do you remember that you saw *Dammaree* the Night that the Disturbance was at the Meeting-House? ○ ○ ○

*Cummins*. My Lord, I don't know the Man; but I did see a Man with the Queen's Coat and Badge; I keep a Shop in *Lincoln's-Inn-Fields*, and a House in *Turnstile*: I being robbed there some time before, I went between the two Shops to see they did me no harm: I sent my Servant to Bed, and going to see if he was there, I did not find him; but going back again by the Fire, the Mob cry'd, Huzza, *Sacheverel*. I thinking of the Boy, did not mind to pull off my Hat, and they struck me over my Head, and then I was forced to hollow as they did. I met my Boy presently, and sent him to Bed: I went away immediately, and by the Fire I saw that Man, and some People had him by the Shoulders, and thrust him about, some one way, and some another: Sometimes he was at a distance from the Fire, and sometimes very near it, but he seem'd as if he could not stand.

Mr. *Darnell*. What time of Night was this?

*Cumms*. As near as I can guess, it was about Eleven o'Clock.

Mr. *Darnell*. Did you see the Mob lay Hands on him?

*Cumms*. I saw them push him from Hand to Hand, and I could compare him to nothing but a Dog in a Ring, they tossed him up and down; but I don't know the Man, but only by the Coat.

Mr. *Darnell*. Do you take it the Mob made themselves merry with him; or, that he added them?

*Cumms*. I can't be a Judge of that matter.

Mr. *Att. Gen.* What time did you shut up your Shop?

*Cumms*. I shut it up, as near as I can guess, at Seven o'Clock, because there was a great Mob: My next Neighbour would not keep open any longer; so we shut up our Shops.

Mr. *Att. Gen.* What time did you send your Servant to Bed?

*Cumms*. I sent him out about three Quarters after Ten, or more, and I run down after him.

Mr. *Att. Gen.* How long was it after you sent him away, that you went to look after him?

*Cumms*. I went presently after him; I got to the Shop before him.

Mr. *Soll. Gen.* Were not other People pushed about besides him?

*Cumms*. I saw no body pushed about but him that had the Queen's Cloth on; I did not stay, but made all the Haste I could away.

L. C. *J.* Are you sure the Prisoner is the Man you speak of?

*Cumms*. No.

L. C. *J.* Do you believe it is he?

*Cumms*. I can't tell; I can't take upon me to say, for it was a Man with the Queen's Cloth on.

L. C. *J.* Whereabout did you see him?

*Cumms*. I was coming up the dead Wall under *Lincoln's-Inn* Garden to see for my Servant, and at the lower End, just by the Shops, there was a great Number of People made a Ring, like that where they play at Cudgels: He was in the middle of them, and they shov'd him about from one to another: I met immediately with my Boy, and I took him a Box on the Ear.

L. C. *J.* I only want to know the Place where you saw him.

*Cumms*. In *Lincoln's-Inn-Fields*, within the Rails, under *Lincoln's-Inn* Garden, towards *Portugal-Row*; I believe it might be seven or eight Yards within the Rails.

Damm.

Damm, My Lord, this Shirt which I have on now, was torn by them.

*Then Mary Reading was sworn.*

Mr. Whittaker. Was you hear this Fire?

M. Reading. My Lord, I heard there was a great Fire, so I went out and saw a great Light; I saw one of our Neighbours, says she, Where is this Fire? I said, I heard it was at *Lincoln's-Inn-Fields*; at that, says she, my Brother was here just now, I wish he is not gone to it. She asked me to go along with her; we went into *Lincoln's-Inn-Fields*, and saw the Fire. As we stood there, I saw a Sconce brought, and thrown into the Fire. I saw a little short Man, a black Man, in black Hair, carry the Sconce round the Fire three times.

Mr. Whittaker. What Drefs was he in?

M. Reading. I could not see what Drefs; I saw he was in Waterman's Cloaths, but I could not see the Colour; but that is not the Man.

Mr. Darnell. Is that the Man?

M. Reading. No; he was a little short Man in his own Hair.

Mr. Darnell. Was there any more than one Sconce thrown in?

M. Reading. I saw no more.

L. C. J. You could not say what Colour his Cloaths were; and can you say that this was not the Man?

M. Reading. Yes.

Mr. Darnell. Did you see any thing more?

M. Reading. When I came away, the Fire was pretty well burnt, and coming along, we met with a Waterman; says the Woman that was with me, Lord, bless me! Here is one of the Queen's Watermen: What have you to say to the Queen's Waterman? says he: Nothing, said she: But God, bless the Queen, and her Waterman too. Says he, You are a jolly Girl, and I will kiss you.

L. C. J. Whereabouts did you meet that Waterman?

M. Reading. As we were going from the Fire, we met him going up to it; and this is the Man that we met going towards the Fire when we came from it.

L. C. J. Was that before, or after the burning the Sconce?

M. Reading. It was afterwards.

L. C. J. How long was it after?

M. Reading. I can safely take my Oath, it was half an Hour.

L. C. J. Was any thing thrown into the Fire after that Man came?

M. Reading. I never went thither after it.

Mr. Att. Gen. Where do you live?

M. Reading. In *St. Andrew's Street*, near the Seven Dials.

Mr. Att. Gen. Did you ever see him before?

M. Reading. Never before.

L. C. J. Where was you going when you met him?

M. Reading. I was going homewards, towards *Great Queen-Street*, and I met him coming towards the Fire.

L. C. J. Was there at that time any Fire in *Drury-Lane*?

M. Reading. They were pulling down the Meeting-House in *Drury-Lane*.

L. C. J. Then you met him coming from *Queen-Street*, a little time after they had begun

to pull down the House in *Drury-Lane*; and about half an Hour after the Branch was thrown into the Fire in *Lincoln's-Inn-Fields*.

M. Reading. Yes, it was.

L. C. Baron. Did you see that he was in drink?

M. Reading. I believe he was; for the Woman he kiss'd, said, he smelt strong of Liquor.

Mr. Att. Gen. How long was this after the Sconce was thrown in?

M. Reading. It was about half an Hour; I believe rather more than less.

*Then Isabel Prince was sworn.*

Mr. Whittaker. Was you at the Fire in *Lincoln's-Inn-Fields* the First of March last, at Night?

I. Prince. Yes.

Mr. Whittaker. Do you remember who it was that carried the Brass Sconce?

I. Prince. Sir, I went to the Fire, because I have a Brother lives by there, and was afraid that he might come to some Damage. As I was going, there was a vast Crowd, and a great Ring, and in that Ring, as I could see between them, I saw a little Man with black Hair, very short; he carried the Sconce three times round the Fire, and then threw it in.

Mr. Whittaker. What Sort of Man do you say he was?

I. Prince. He was a black Man, a short Man with his own Hair.

Mr. Whittaker. Is that he?

I. Prince. No.

Mr. Whittaker. Was he in Waterman's Habit?

I. Prince. Yes; but I can't say he had a Badge.

L. C. J. Was you with the last Witness?

I. Prince. Yes.

L. C. J. How near was you to the Fire when you saw him carry it round?

I. Prince. As near as I could get for the Crowd, I believe as near as that Place, [Pointing to the other Side the Court.] I could not go any nearer, for the Fire was vastly hot.

L. C. J. Was there any Crowd there?

I. Prince. Yes, a great one; but I was of the outside of the Ring.

L. C. J. Then if he was a little Man, and you are no tall Woman, and you were of the outside of the Ring, how could you see him?

I. Prince. Because I look'd through under their Arms as they passed along: The Crowd was still going to fetch Fire, so that they many times abated, and came again.

L. C. J. You say you distinguish'd his Hair to be black; what Colour was his Coat?

I. Prince. I can't well tell; but I believe it was either grey or black.

L. C. J. Had he any Badge?

I. Prince. I believe he had.

L. C. J. Where was it?

I. Prince. I saw it upon his Arm.

Mr. Whittaker. Was the Crowd greater about the Fire at some times than others?

I. Prince. Yes, the Crowd abated; some went to *Holborn*, and some to the Right, and some to the Left.

L. C. J. The last Witness said, the Fire was burnt to a Coal.

I. Prince. Yes, the Fire was burnt to a Coal; and as I was going home, I met this Man: Says I, There goes the Queen's Waterman: Says he, What have you to say to the Queen's Waterman?



man? Nothing, says I, but God bleſs the Queen, and her Waterman too. And then he gave me a Kiſs, and there we parted.

*L. C. J.* I take Notice of that Expreſſion, That you ſaid there goes the Queen's Waterman: Had you heard any Talk before of the Queen's Waterman?

*I. Prince.* No; but I heard that the Guards were coming.

*L. C. J.* You did not take the Waterman for one of the Guards, did ye?

*I. Prince.* No.

*L. C. J.* But had you heard any one ſpeak of the Waterman before?

*I. Prince.* No.

*L. C. Baron.* Where did you meet him, when you had that Favour from him?

*I. Prince.* Within the Rails, he was going to the Fire, and I was going from it.

*L. C. Baron.* Whence did he come?

*I. Prince.* I think either from the Corner, by the Duke of Newcastle's, or from *Clare-Market*; I don't know which, for I met him within the Rails.

*Then Rowland Walker was ſworn.*

*Mr. Whittaker.* Did you ſee *Dammaree* the Firſt of *March* laſt?

*R. Walker.* Yes.

*Mr. Whittaker.* At what time?

*R. Walker.* At half an Hour after Eleven.

*Mr. Whittaker.* Where did you ſee him?

*R. Walker.* At *Strand-Bridge*, I carried him in my Boat.

*Mr. Whittaker.* Where did you carry him?

*R. Walker.* Croſs the Water.

*Mr. Darnell.* Did you obſerve any Clock ſtrike?

*R. Walker.* Yes; *Somerſet-Houſe* Clock ſtruck two Quarters paſt Eleven before he came into my Boat.

*Mr. Darnell.* Where did you carry him?

*R. Walker.* To *Marſh's* Cauſe-way.

*Mr. Darnell.* Does he live there?

*R. Walker.* Yes; juſt by.

*Mr. Darnell.* Did you ſee him home?

*R. Walker.* No; I helped him out of the Boat; but I did not go home with him.

*Mr. Att. Gen.* Was you deſired to take Notice what o'Clock it was?

*R. Walker.* No; but I was in my Boat waiting, and heard the Quarters ſtrike.

*Mr. Att. Gen.* You ſay it ſtruck the Quarters; how many Strokes denotes it?

*R. Walker.* Two.

*Mr. Att. Gen.* Then you did not hear what the Clock itſelf ſtruck.

*R. Walker.* Yes; I heard the Clock ſtrike Eleven before he came down.

*Mr. Darnell.* What Hour did the Clock ſtrike, before it ſtruck the two Quarters?

*R. Walker.* The great Clock ſtruck Eleven, and I ſat in my Boat and ſmoked a Pipe, and at the ſecond Stroke after Eleven, I took him into my Boat.

*L. C. Baron.* What Condition was he in?

*R. Walker.* Very much in Drink.

*Then Heſter Hales was ſworn.*

*Mr. Whittaker.* Did you ſee *Mr. Dammaree* the Firſt of *March* laſt at Night?

*H. Hales.* Yes.

*Mr. Whittaker.* At what Time?

*H. Hales.* A little after Eleven,

*Mr. Whittaker.* At what Place did you ſee him?

*H. Hales.* At the Maypole in the *Strand*.

*Mr. Whittaker.* Which way was he going?

*H. Hales.* I was coming out of *Fleet-Street*, and he was going the other way.

*L. C. J.* Which way was you going?

*H. Hales.* I was going out of *Fleet-Street* home, where I live.

*L. C. J.* Where do you live?

*H. Hales.* Over-againſt *Somerſet-Houſe*.

*L. C. J.* Where did you meet him?

*H. Hales.* I met him by the Maypole.

*L. C. J.* What Place did you come from?

*H. Hales.* I came out of *New-Street*.

*L. C. J.* Which way do you apprehend he had come?

*H. Hales.* I did not aſk him, but he was in the *Strand*, going along towards *Temple-Bar*.

*L. C. J.* Whereabouts in the *Strand*?

*H. Hales.* On the other Side the Maypole, going towards *Strand-Bridge*.

*L. C. J.* What o'Clock was it then?

*H. Hales.* A little after Eleven.

*Mr. Att. Gen.* What o'Clock do you take it to be now?

*H. Hales.* What o'Clock! Why, 'tis paſt One.

*Mr. Soll. Gen.* Which Side of *Drury-Lane* was it you ſaw him?

*H. Hales.* On this Side *Drury-Lane*.

*Then Harbins was ſworn.*

*Mr. Whittaker.* Did you meet the Priſoner at the Bar, on the Firſt of *March* laſt; and at what time?

*Harbins.* I met him in the *Strand* as I was going home to my Lodging about Eleven o'Clock: He was in Drink, and I ſaid to the Gentlewoman with me, Pray have a care of the Man; for he is in Drink.

*Mr. Att. Gen.* Whereabouts did you meet him?

*Harbins.* I met him about three Doors from the *Swan Tavern*.

*Mr. Whittaker.* My Lord, we will call ſome Witneſſes to his Reputation, to ſhew how he has all along demeaned himſelf.

*Then John Michaelmas was ſworn.*

*Mr. Whittaker.* Do you know the Priſoner at the Bar?

*J. Michaelmas.* Yes.

*Mr. Whittaker.* Do you live in the ſame Pariſh?

*J. Michaelmas.* Yes.

*Mr. Whittaker.* What are you there?

*J. Michaelmas.* The Church-warden.

*Mr. Whittaker.* What Behaviour is he of?

*J. Michaelmas.* Of very good Behaviour.

*Mr. Whittaker.* Is he diſaffected to the Queen and Government?

*J. Michaelmas.* I believe no man better affected.

*Mr. Whittaker.* Did you ever hear him talk diſreſpectfully of the Queen, or Government?

*J. Michaelmas.* No; quite otherwiſe: In *February* laſt he came to me, and aſked me, Do you hear what a Noiſe this Mob makes? Yes, ſaid I; I am ſorry for it; and I am ſorry too, ſays he: They ſay the Queen is aggrieved at it, and it troubles me to think of it.

*Mr. Whittaker.* At any times when there has been publick Rejoicings for any Victories, how has he behaved himſelf?

*J. Michaelmas.*

*J. Michaelmas.* The most forward Man in them.

*L. C. J.* Is he a sober Man?

*J. Michaelmas.* Yes.

*L. C. J.* Does he use to drink?

*J. Michaelmas.* I have seen him in Drink.

*L. C. J.* What kind a Man is he then?

*J. Michaelmas.* A quiet Temper; not at all quarrelsome, but a fawning, loving Temper.

*L. C. J.* Did you ever hear him talk about the Meeting-Houses?

*J. Michaelmas.* No.

*L. C. J.* I ask that Question, because there has been a gross Mistake spread abroad as if they were serving the Queen, when they made that Bustle; that is a Mistake that has gone abroad.

*L. C. J.* Did you ever hear him say any thing of Dr. Sacheverel?

*J. Michaelmas.* Yes.

*L. C. J.* What did he say of him?

*J. Michaelmas.* He said, he wished the Sermon had never been preached, or printed; and then this Trouble had not been.

*Mr. Whittaker.* Did you see him after this?

*J. Michaelmas.* Yes, I saw him the next Day at Noon.

*Mr. Att. Gen.* Had you any Discourse about the Meeting-Houses?

*J. Michaelmas.* No, none at all.

*Mr. Darnell.* Where did you see him the next Day, and at what Time?

*J. Michaelmas.* At Twelve o'Clock I saw him pass by my Door.

*Mr. Thomson.* You have conversed with him: Did you never hear him give his Opinion of the Dissenters, and the Meeting-Houses?

*J. Michaelmas.* No; never.

*Then Mr. Pottinger was sworn.*

*Mr. Darnell.* How long have you known Mr. Dammarie?

*Mr. Pottinger.* I have known him eighteen or nineteen Years.

*Mr. Darnell.* Do you take him to be disaffected to the Government?

*Mr. Pottinger.* No; not in my Opinion.

*Mr. Darnell.* When you conversed with him, how has he declared himself?

*Mr. Pottinger.* Always for the Government as much as any Man in our Parish, and I believe has been as serviceable as any Man in getting Men to serve the Queen when he was Master of the Company.

*L. C. J.* What are you?

*Mr. Pottinger.* I call myself a Timber-Merchant.

*L. C. J.* Then I suppose you have not had much Conversation with a Waterman.

*Mr. Pottinger.* Not a great deal.

*Then Mr. Moor was sworn.*

*Mr. Whittaker.* How long have you known Mr. Dammarie?

*Moor.* I have known him above thirty Years.

*Mr. Whittaker.* What Character has he had?

*Moor.* An honest, civil Man, and as good a Neighbour as can be.

*Mr. Whittaker.* How has he carried himself to the Queen and Government?

*Moor.* I never heard him say a Word against the Queen, or Government, but was always wil-

ling to serve the Queen; and particularly when he was Master of the Company, in sending Men into the Service.

*Mr. Whittaker.* How did he behave himself in that?

*Moor.* He did great Service to the Queen.

*Mr. Whittaker.* Were there a great many Men taken up by him?

*Moor.* He took up a great many Men.

*Then John Hatfield was sworn.*

*Mr. Whittaker.* How long have you known the Prisoner at the Bar?

*J. Hatfield.* Almost twenty Years.

*Mr. Whittaker.* How is he with respect to his Principles towards the Government?

*J. Hatfield.* I never knew any Ill by him: I never heard but he was an honest, careful Man: I never heard but that he loved the Queen.

*L. C. J.* As to the matter of his Reputation, I think it is pretty well established, and they say nothing against it.

*Mr. Att. Gen.* We come to try the Man for this Fact only, and have nothing to say to any former Transactions.

*Mr. Whittaker.* My Lord, we will call no more Witnesses, unless the Queen's Council give Occasion in their Reply. We think we have proved that he was not a free Agent, but under the utmost Force. We hope we have made it appear, to the Satisfaction of your Lordship, and of the Jury, that this Man, though he had the Misfortune to be present when these Tumults and Disorders were, yet he had no Share that was criminal in them.

*Gentlemen,* You will remember that though one Person did swear that he carried the Sconce in Procession, yet we have proved that in point of Time it was impossible he should be there, and that there was another Person that did it. As to the other Witnesses, they take upon them to say that he did hollow with the Mob; we must appeal to you, the *Gentlemen of the Jury*, and don't doubt but you have taken Notice of what has been sworn, that he was under a Force; and when he was in that Condition, and in fear of such a tumultuous Assembly; if to save himself, he did so far comply with them, that will not make him guilty of Treason, and levying War against the Queen.

I must observe as to *Orrel*, that Witness that seems to affect us most, and carries us so far as towards *Drury-Lane*, he does not pretend to give an Account of any thing that concerns us precedent to that. Now if this Man was got into such a Tumult as this, and he did go along with them a little Way, and they cannot shew that he acted any thing afterwards, there will be no Reason to think him guilty of any Crime, at least, not of levying War, and so not of High Treason. We hope we shall stand fair in the Opinion of the Jury, that he was not a voluntary or free Agent in these Disorders: But if we should be so unfortunate as to be thought otherwise, yet we must insist, that *that* Point which the Queen's Council insist on, to wit, that the Fact attempted to be proved on the Prisoner is levying War, is not yet so settled a Point, but may deserve a further and deliberate Consideration. I am sensible there is one Case of the *London Apprentices*, which was in King *Charles* the Second's Time, there was a Resolution, that *that* Fact was levying of



War, and so High Treason; but I cannot but observe one thing, that my Lord Chief Baron *Hale*, who can never be spoke of but with the greatest Esteem that may be, in the very Case mentioned, that he differs with the other Judges, and that he was of Opinion, that *that* Fact was not levying War, and he grounded his Opinion upon that which we think was great Reason, and that is the Statute *primo Mariæ* 1 Cap. 12. It is not printed at large in *Keeble*, but it is in *Rastall*; and on view of that Act, his Opinion is well justified, for that Act of Parliament shews, that all the several Facts for which the Apprentices, in King *Charles* the Second's Time, were indicted, as reported in *Keyling's Reports*, all the several Circumstances, that are in that Case, were not looked upon then to be High Treason. But even in that Queen's Time, who had just Reason to be very apprehensive of Tumults and Wars, is this Statute made, to make the Actors in such Tumults guilty of Felony: And if such Tumults did amount to levying War, and was High Treason, it is strange, that the Parliament should make so unnecessary a Statute as this, *præmo Marii*. And before Queen *Elizabeth's* Time, no one can give an Instance, that a Tumult of this Nature was looked upon, or adjudged as levying War. That it was not so before the Statute of 13 *Eliz.* is plain, because that Statute seems to be made on Purpose to shew it was not a capital Offence, and that such Tumults had not been adjudged levying War, and so not Treason, before that Statute of the 13th of Queen *Elizabeth*; and for that very Purpose, and to prevent such Riots and Tumults, was that very Statute made: And the Provision made by this Statute of Queen *Elizabeth*, which was a temporary Law, was the Reason of the Resolution in the Earl of *Essex's* Case, and that Statute made his Insurrection be adjudged levying War and High Treason, and shews that it was necessary to have another Act besides the 25 *Edw. III.* to make such Tumults and Riots Treason.

The Case in *Keyling's Reports*, of *Messenger*, and the others, supposing it to be Law, will not warrant the adjudging this Case to be Treason, in regard there appears to be many Circumstances in those Cases in *Keyling's Reports*, which are not proved in this Case now before your Lordship. But I must needs say, the Prisoner at the Bar has had so little Care taken of him, that I had no Notice of this 'till Eight o'Clock last Night, and have not had Time to look into the Cases, and to be able to discharge my Duty to my Client as I ought; but I am sure, the Gentlemen that appear for the Queen, have so much Candour, that they will not desire any thing in this Man's Case, but what shall be a Precedent in all future Cases; therefore I shall state the Cases rely'd upon for the Authority of the Resolution in *Keyling's Reports*, as well as I can, upon this short Notice. The first Case is in 2 *Anderson*, fol. 5. it was the Case of the Apprentices of *London* and *Southwark*: They assemble together upon a formed Design, concerted and contrived amongst them before, to break open the Prisons, to kill the Lord-Mayor, to burn his House, and to seize some Arms in Houses near the *Tower of London*. They had a Trumpet before them, and a Flag displayed with them, and that was adjudged to be levying War, within the 13 *Eliz.*

I must observe, that this was an Opinion not given in Court, nor upon a special Verdict, but given privately, and not otherwise; so that we think the Authority in that Case will not weigh very much, though all the subsequent Cases in *Popham's Reports*, and *Keyling's Reports*, are built on the Authority of this Case, and yet the Judges in this Case in *Anderson's Reports*, rely for that Opinion on the Statute of 13 *Eliz.* and that Statute was on very great Reason made to prevent the ill Designs then on Foot by the *Roman Catholics*. There were many *Roman Catholics* then began openly to shew their Aversion to the Reformation in general, and it was then, for the Preservation of that good Queen, and her Government, thought necessary to enlarge the 25th of *Edw. III.* and also to make the Design to levy War High Treason, during her Life only, so that *that* Case in 2 *Anderson*, was not resolved on the 25th of *Edw. III.* but on the 13th of *Elizabeth*.

There is another Case, which was the Earl of *Essex's*, and that was relied on as an Authority in *Messenger's* Case in *Keyling's Reports*; but that differs from this: There was a Design of the Earl, to have Assistance from the City, and by Force to remove his Enemies from the Queen, and with armed Force, to go to the Queen's Palace, and to her Person, and an actual Rising and Appearing in Arms accordingly. This was conspiring the Death of the Queen, and levying War in the most notorious Manner; and this was one of the Cases relied on in *Messenger's* Case: But here, in the Case now before your Lordship, there is no one Circumstance resembling the Earl of *Essex's* Case. There is one Resolution in that Case, applicable to ours, and that is the Resolution of the Judges, in the Earl of *Essex's* Case, that where People by Accident came among, and were in Company with the Earl of *Essex*, and his Adherents, and afterwards departed upon Proclamation made, they should not be guilty of the Treason. In the Case before your Lordship, it appears, the Prisoner came there by Accident; and we have shewn by Witnesses, he quickly left these disorderly People.

Another Case relied on in *Keyling's Reports*, is that in *Croke Car.* the Case of the People that beset *Lambeth House*; that was a most unjustifiable Act, done in Despite, and in the utmost Contempt of the Crown and Regal Dignity, and with an armed Force, with Drums, and an armed Multitude; and the Resolution in that Case, will be no Warrant for the adjudging this Case of the Prisoner Treason, supposing we should not be so happy as to have our Witnesses believed, that we were brought in by Force; for, in our Case, here are no Drums, nothing resembling War, but only a tumultuous Rabble.

The Case of *Bradshaw* and *Burton*, in *Popham's Reports*, 122, is wholly built upon, and absolutely depends on the Authority of the Case in 2d *Anderson*, and yet, in the Case of *Bradshaw* and *Burton*, there was a previous Agreement, to go from House to House, and to pull down all Inclosures. It is true, that the putting this Agreement in Execution accordingly, is resolved to be High Treason. We think, that *that* Agreement, and Rising according to it, is more than appears in this Case of the Prisoner at the Bar; and besides, it is a Resolution in the 39th Year of Queen *Elizabeth*, when the Statute of



of the 13 *Eliz.* was in Force, and depends on the Authority of the Case I have mentioned in 2d *Anderson's Reports*; and in our Case there is no Proof that we knew any Thing of this tumultuous Meeting, but that by Accident we fell among them. We hope, that if the Jury shall think there is any Colour to believe, that we have not answered by our Witnesses, (whose Credit is not questioned) the Evidence produced against the Prisoner, that this Point may be reserved to us; for we apprehend, that it is not settled, that this Case of *Messenger*, and the others in *Keyling's Reports*, is Law: But, supposing it should be Law, yet we hope it will not affect us; for it goes upon a previous Agreement, and all there were Partakers of it, and willing, and outrageous Actors in it, and knew of the Design before executed: And there was this Circumstance, that when the Captain of the Guards came to appease them, they asked if it was the Duke of *York*; and when they apprehended it was the Duke of *York*, they called out, That they cared not for the Guards, and that they would come and pull down *Whitehall*: So that, by these Declarations, it is plain, the King and his Authority were aimed at. But in this Case of ours, there is nothing of resisting Authority charged on this Man, but that he came by Accident, and acted only by Constraint and Force, when unhappily amongst a disorderly Multitude: Therefore, my Lord, on the whole Matter, in regard we do, with Submission, think, that the Law is not settled by the Resolutions in *Keyling's Reports*, but that a Review thereof may be admitted, and in regard we think our Case is far different, and a much better than any of the former Cases, which have been looked upon or esteemed as levying War, we hope, that in case the Jury should think we are guilty of any criminal Act, that whether such Acts be levying of War, or no, shall receive a further, and more deliberate Determination. I shall therefore take up no more of your Lordship's Time.

Mr. *Darnell*. My Lord, the first Time I heard from the Prisoner relating to this Cause, was last Night late; and must own my Opinion to be, that a longer Time is necessary to encounter the Authority of the Report of my Lord *Keyling*. But, my Lord, without disputing the Authority of that Book, we must say, this Case comes far short of that Resolution; for there was a plain Hostility, a Captain, with a Sword drawn, Colours, two Meetings to consult, and a Resolution taken, a resisting and wounding the Constable, and striking the Officer of the Guards, and their Intention to pull down Bawdy-Houses, which might be any House they thought fit to call so. As for the Case of *Oxfordshire*, it is plain, there was an arming themselves, they had put on Armour to act offensively, as well as defensively; they proposed to come to *London*, and to have others join with them, and that Case was adjudged High Treason. For the general Intention to pull down Inclosures: Where there is any Resolution, that these great Tumults amount to High Treason; it is on this Foundation, that the Design is General, and is an exercising of a Regal Authority, which no body but Her Majesty ought to make use of. It is said in *Messenger's Case*, that the Intent must be such, and that such Intent must appear by such Proof as will satisfy the Jury. Now how do they offer to

prove the Intent of this Man? If there is any Thing to prove it, it is subsequent to the pulling down the first Meeting-House, for it is plain he was not there till the Design was so far executed, and the Fire had been made an Hour before he came: Now if he comes there, and hollows, and rejoices at it, that cannot make him Guilty. I agree, that if any Number of Persons are going to commit High Treason, and a Man meets them, and joins with them in the Execution of that Fact, he is Guilty; but if he be ignorant of their Design, and hollows and rejoices with the Crowd, that will not make him Guilty: And in this Case, it appears, that every Body that passed by the Crowd that Night were constrained so to do; but where such Person, who is got into such a tumultuous Assembly, doth get off as fast as he can, this cannot be High Treason, or any Crime whatsoever. If the Prisoner had gone to *Drury-Lane*, and they had shewn that he did any Thing there, we should have had a harder Case than we hope we have; but we think there is no Proof of the Intention of this Man to commit those Facts of pulling down the Meeting-Houses in general, and of assisting in the Execution of that Intention. My Lord, if our Witnesses (whose Credit stands unimpeached) be believed, it is impossible that he could be concerned in this Design, or the Execution of it, or know any Thing of it, 'till it was executed: For it don't appear, that on any of the Days, when the Mob were together, that he was among them, or that he acted any thing 'till after the Meeting-House was pulled down, and the Fire made. We have shewn where he was all that Day, and that it was near Eleven when he came to the Fire. I think we have shewn, by the Waterman that carried him Home, that there was not room for him to bear any Share in this Outrage; for between the Time of his coming to the Fire, and going Home by Water, there is no room for him to do any Thing more, than to go between those Places. There is no Proof that he did any Thing but what the Mob in a Manner forced him to do; and perhaps it might have cost him his Life in so tumultuous an Assembly, or, at least, some bodily Harm, if he had done less.

Mr. *Att. Gen.* My Lord, I beg leave to say a few Words, in Answer to what has been insisted on by the Prisoner. They have insisted on these three Things; First, That notwithstanding our Witnesses have given that Account which you have heard, yet they are mistaken in the Fact, for he was not the Man that they say was there bringing the Brass Candlestick; that it was another Man, a little Man in his own Hair, and not like the Prisoner, and therefore he is not Guilty of the Fact charged on him. In the next Place, they tell you, That admitting he was there, and that our Witnesses have told you Truth, yet he was there unvoluntarily, and what he has done was under a Force, and therefore he can't be looked upon to be guilty of the Treason, because, intentionally, he did not go along with them in that Design. The third is, That admitting you should believe all that the Witnesses say, that he was there, that he did know of this Design, and acted in it, in Concert with the rest, yet this Charge don't amount to High Treason, and therefore he ought to be acquitted.

Now, tho' this is the last Thing mentioned, yet it is of the most Consequence, and ought to be



be taken Notice of first; because if he is guilty of the Fact, yet if it don't amount to Treason, he must be acquitted. They tell you it is a notorious Riot, such a Tumult as is not to be endured; that a Punishment ought to be inflicted on those People, that were concerned in it: But they insist on it, that this is not High Treason as charged in the Indictment. Now I think it is a plain Proposition laid down, that whenever there is Force used against the Government; whenever there is a general Intention to work a Reformation; whenever there is an Oppression complained of, and the People use Force in order to remedy it, and there is an Assembly of a Multitude for that Purpose, it is levying War; for it is an Opposition to the Government, and the Civil Magistrate.

My Lord Coke in his Comment on the Statute of Treason, takes Notice of this, and says, That if any go about by Force to reform any thing they complain of, it is levying War; because they take upon them Royal Authority, which is against the King. The Case they mention of *Bradshaw*, where a great Number assembled, in order to settle the Rate of Wages, they thought there was not enough given them for their Labour: They did appear in publick, in order to redress that Grievance; and that Appearance in publick was looked upon to be High Treason.

It is not proper here, to enter into all the Cases that may be cited; the last Book they take Notice of, is my Lord Chief Justice *Keyling's*, which was printed with the Approbation of all the Judges of the *Queen's-Bench*; and every body knows that he was as great a Judge, particularly in the Crown-Law, as any that went before him. And it is the Opinion of all the Judges, excepting one, that *that* Case is Treason; and you see on what his Opinion was founded, that it was not High Treason, because there is a particular Act of Parliament which says, That in Case Proclamation shall be made for them to depart, those Persons that do not depart on that Proclamation, shall be guilty of Felony. That Act relates only to the Meeting and Assembly on a private, particular Account; for if a Lord enclose a Waste, and the Tenants rise in Opposition to that Act, in order to redress that Inconvenience, no body will pretend to say, it extends to High Treason; because it is a private Inconvenience that goes no farther than that Manour. But at the same Time that they made use of this Distinction, it is taken notice of, That if there be a publick Law, that is looked on to be the Grievance, and they came to redress the Grievance arising from that Law, that is opposing the Publick, and is High Treason.

Now, to compare these Cases: There was a Design on *Tuesday* Night declared among the Mob, that on the next Day they would destroy all the Meeting-Houses thereabouts: Sure none will say, (let their Opinions be what they will,) that destroying a Meeting-House is more Service to the Publick, than destroying a Bawdy-House? And yet their meeting to pull down the Bawdy-Houses, was adjudged to be Treason. And shall they be hanged, for pulling down Bawdy-Houses, and have nothing but a Fine for pulling down Meeting-Houses? Every body knows they are allowed by Law. The

Act of Parliament that gives Indulgence to the Dissenters, allows them to meet in those Places: It were to be wished, there were no such Persons that did dissent from the Church; but these Places being allowed by Law, it is lawful for them to meet there. Now for People to find fault with this Law, and to say we will redress this Inconvenience; though the Publick will not throw these People into Jails for meeting there, we will pull down their Houses about their Ears; this is an Insolence not to be suffered. This is assuming an Authority that don't lie in the People; every body that lives under a Government has Courts of Justice to apply to, and when any Thing is acted contrary to Law, the Courts of Justice are open; and I may defy any one to shew that there has been a Denial of Justice upon due Application.

Now for People to meet together to do right to themselves, and to be Judges and Executioners at the same time, is never to be born, but deserves the most severe Prosecution; and it is a Sense of this that brings this Cause here. For, as to the Man, I never saw him before; no body bears him any ill Will; but it is known that there have been these Riots and Rebellions committed; and it is agreed that he was among them. This brings me to take Notice whether our Witnesses are mistaken in saying he was there: They knew the Man; they spoke with him; and they are positive to him; and they give a particular Account of what he and they said, and what they saw him do; and now they say, our Witnesses are mistaken. As to the Hours, little is to be depended on, because People are so uncertain in their Computations: It is plain they were all suppressed by Twelve o'Clock, so that he might stay as long as any, and yet be in Bed by Twelve o'Clock, for by that Time the Guards came and suppressed them. They give an Account of him till Ten o'Clock; I find there was no Business that detained him till that Time; he had nothing to do in the Alehouse; he was got drunk, and he staid in this disorderly Place till the Time was proper for him to come out, and transact this Matter. For it was about Ten that one of our Witnesses saw him at the Meeting-House, and at the Fire, and he went along with him towards *Drury-Lane*, and there he left him: And this agrees with what his own two Witnesses say; they say, they saw him by the Duke of *Newcastle's* Corner, coming from *Queen-Street*, and going towards the Fire: It was after this, that he had hollowed them away to *Drury-Lane*, and was again returning; it is plain by the Evidence of both Sides, that he was there. All that they insist on, is, that he was forced into the Crowd; but how agreeable is that to the Story of the Witnesses that saw him bring the Sconce, and carry it in Procession round the Fire, and throw it in?

He calls *Wood*, who tells you he was his Friend; that he had been with him all Day. He tells you, that they received News that there was a Fire in the *Strand*; that the Prisoner was concerned for a Gentlewoman that lived there, and that they went away immediately to assist her. *Wood* says, he went with him as far as *Temple-Bar*, and there the Crowd was so great, that they were forced by the Torrent of People up *Sheer-Lane*, and through *Lincoln's-Inn-Square*, and



and they could not get away till they were crowded through the little Gate, and there they took hold of and forced him to do all that he did: We must leave that to your Consideration; but we think it very extraordinary. But the other Witnesses do contradict it; *Ward* and *Giles* say, that he stood and talked with her, and she told him first of this Riot, and that he was then alone and no body with him. I will not repeat the particular Circumstances that have been proved: That he was there they have proved; and we have proved that there was a general Design of pulling down these Meeting-Houses. We can't prove the Design of any Man but by his Actions: If a Man meet with People that have before laid a Design, and he acts with them, the Law says, the Intention of every Man there is to do what was the Design of that Meeting. The Design was to pull down these Houses, and they did execute it; and it being done by Force, we think it does maintain the Indictment, and that he is Guilty of the Fact charged on him, and we submit it to your Lordship and the Jury.

*Mr. Soll. Gen.* My Lord, There are two Points to be considered in this Case: *First*, Whether this Tumult be a levying War, and High Treason? And in the next Place, how far the Prisoner may be concerned in it, Whether what he has done, has made him equally Guilty with the others, supposing the general Design and the Execution of it to be High Treason?

We take it that this Design to pull down these Meeting-Houses, was a general Design; and being a general Design, and done upon pretence of Reformation, and in defiance of the Law, that this is High Treason, and levying War; and Facts of this kind in all Ages have been adjudged so. The general Design is proved by what followed, by the Action, by pulling them down; for we have proved that four were pulled down, and that there was an Intention, or Declaration that they would pull down Meeting-Houses. What is this Design against? It is against the Queen: It is levying War within the Realm, which I take to be a material Word, in the 25th of *Edw. III.* It is levying War against Her Sovereignty, Her Power and Authority, in Matters which She, either as concerned in the Legislature, or in the executive Power of the Government, may reform and correct. The taking Arms in defiance of any Law, or to correct any Abuse, or to deprive the Subject of the Benefit of any particular Act of Parliament, is levying War and High Treason, and so adjudged by the Statute of Queen *Elizabeth.* The Case of the was long before that time; the Case of Inclosures was a private Interest, yet the getting a Number of People together, in order to throw down all Inclosures, is adjudged to be High Treason; and that Resolution has always been affirmed. That is the Interest of private Persons, and therefore will shew that what they insist on of the other side against the Queen, is of no Consequence; for if it was levied against her Authority, with submission that is High Treason: the taking up Arms against it, tho' there was no immediate Intention against her Person, or to destroy her. Indeed it has been common to lay a Design to compass and imagine the Death of the Queen, and the Overt-Act of the Treason has been the

Proof of that Design; there the compassing is the Treason, and the Overt-Act is only the Proof, and therefore a Design must be laid in that Case. But in Cases of this nature, the levying War is the Treason, and therefore the proving the levying War, is sufficient, without laying any Design to compass or imagine her Death. Now that this is against the Queen, and her Sovereignty, is most plain, because it is certain these Meeting-Houses are tolerated by Law: The Dissenters are indulged in the Exercise of the Worship of God in their own Way, by the Act of Parliament: That Act of Parliament can be taken away by nothing but an equal Power: In which the Queen must give her Assent, and it must have her Concurrence. The Queen has the Administration of Justice under her Care, therefore taking up Arms to destroy Meeting-Houses in this manner, is levying War against the Queen, and levying War within the Realm; to invade that Right which by the Laws of the Kingdom these People are entitled to: For the Law has given this Right. Now to take up Arms to violate that Right, is High Treason, and is a stronger Case than any that have been mentioned and agreed to be Law. The Case of an Inclosure is a private Interest; the taking Arms to enlarge a Highway is so; to destroy Bawdy-Houses is so; to take up Arms to remove a publick Nuisance, which ought to be the particular Care of the Government, that is levying War.

They have insisted upon the Statute of the 13th of *Elizabeth*, which they use as an Argument to shew that this was not Treason within the Statute of *Edward* the Third; but that Act was to make a Conspiracy to levy War, High Treason. But then how stood the Case of the Inclosures at that time? Several People conspired to throw down Inclosures, and that was adjudged High Treason, because it was a Conspiracy to levy War; and how could that be High Treason, if taking Arms to throw down Inclosures were not so? We take it, that the Case in *Anderson* is full in Point; and these Cases are affirmed by the Judges in the Case of *Messenger*: So that it is the greatest Authority, and never to be shaken. They say the Case in *Anderson* is a private Opinion; it is the Opinion of the Two Chief Justices, and the Master of the Rolls; the others are the Opinion of all the Judges: So that it is such an Authority as never can be shaken.

This shews the Foundation that there is for this necessary Prosecution, that People may see that it is not in the Power of every Man, according to his own Fancy, to find fault with the Government, and alter the Laws, and deprive the Subject of any Benefit he is entitled to by Law. It is an Invasion of the Royal Authority; they may by the same Reason fall upon a Man's Person, as they may pull down his House; and things of this Nature must run into endless Confusion, and none can be safe, unless People that are thus Guilty, be brought to Punishment.

These Authorities then being so strong, we hope, that, as the Case stands, on the Evidence for the Queen, that the Prisoner has been proved Guilty of the Charge in the Indictment: For that there was a general Design, appears by what was done in the Execution of it. The only Question



tion is, Whether this Man was privy to any precedent Design? And for this, I rely on the Lord *Essex's* Case, in *Moor's* Reports, which was settled by all the Judges in *England*. I say, that it is not necessary to prove any such previous Intention, any more than if a Man should be so bold as to murder a Judge on the Bench, Must you prove, that there was any Design? Don't the Blow, that was given, shew the Design? And is it not High Treason, in case of counterfeiting the Coin? Must you prove an Intention? No, the Treason is in the Fact, and not in the Intention: Where it is in the Intention, as compassing the Death of the Queen, there must be an Intention proved; but where it is in Fact, where the Fact is Treason, no previous Design is necessary to be proved, in any Case whatsoever: The Fact itself is the Treason, and speaks the Design, and the Man that commits Treason, must do it with a treasonable Intention. And in the Lord *Essex's* Case, it was adjudged, that my Lord *Southampton*, who join'd with him in that Fact, which was adjudged levying War, was guilty of the same Treason, though he did not know of the Design of the Lord *Essex*, but thought he meant only to remove some particular Enemies of his from the Queen.

They say, if he was there, he was only there by Force: As to his coming there, I think it is as fully proved as can be; but say they, it was not he that threw the Sconce into the Fire, for he was at another Place at that Time, for that was thrown in at Nine or Ten o'Clock, and he was then elsewhere. I wonder this should be insisted upon, it being only a small Variance in Time; and as he was observed to do the Fact, it is not material as to the Hour: Therefore, unless what the Women say is an Answer to that Evidence, it still remains unanswered; and as to what they say, we must submit it, whether it can be believed, whether they deserve that Credit; whether a Man that stood by, and saw every thing that passed, and follow'd him up the Street, to the Fields; whether they can deserve that Credit that this Man does; for what they saw was only at the Fire. They agree a Waterman did it, but it was a short Man in black Hair, and they saw him only by looking under some People's Arms, they could not discern so particularly as this Man, that saw him come out of the House, and follow'd him: But whether he was concern'd in that Act or no, is not material. His going from the Fields, and hollowing the People to *Drury-Lane*, is a Matter they have not answer'd, they have given no Evidence to answer that; and if that were so, it is a sufficient Evidence of his levying War; that is enough, his saying he would lead them, and encouraging them to go with him; that, no doubt, will be a full Evidence, join'd with his being at the Fire, which is proved by five or six Witnesses; and this is contradicted by nothing, but saying, he did it by Force, and if that were Fact, then certainly he would not be Guilty: But on what does this depend? On Two Witnesses; on *Wood*, whom, I think, no body can believe, for he contradicts himself, in coming to the Place, and going from it again; and how defective he was in every Point, I doubt not, your Lordship and the Jury have observed. But when they call their other Witness, they make it clear; for if any Credit is to be given to their other Witness, *Wood* is not

to be believed, for he says, the Prisoner left the Alehouse to serve a Friend in the Strand, and that he went along with him; but this is contradicted by the other Witnesses, and it appears, that he was not with him in *Fleet-Street*. *Cummins* says, the Prisoner was drunk, and thrust about by the Mob, from one to another; but he don't prove he was under any Force, if he had, they would have treated him otherwise, but they are continually jostling, and playing with one another; and though other People were threaten'd, that don't prove that he was. They say he was drunk, that is no Excuse at all. I was willing the Jury should have all the Circumstances before them, and therefore join'd in asking that Question; but it can't be material, nor is he more or less Guilty, whether he was drunk, or sober; so that we take it, there is no Evidence that he was under any such Force, as put him under a Necessity, for his own Preservation, to join with the People in this Tumult. If he was not under an absolute Necessity, he can't be excused; so that it is plain, they have not answer'd that Matter at all. And as to the two Women, that never saw him before, but met him coming back to the Fire; and as to the Proof, that he was at Home at Twelve o'Clock, that is no ways inconsistent with our Evidence. The Matter of Reputation is no ways to be considered in this Case; I would not say any thing more, but you hear what was the Noise of the Mob, and that Cry and Hurry that was made on this Occasion, was in defiance of the Justice of the Nation, which was then carrying on in the most solemn Manner. But we submit it to your Lordship, that this Fact, this Design, executed in this Manner, is plainly levying War, and High Treason; and the Prisoner at the Bar, by the Evidence that has been offer'd, is Guilty of the Fact charged against him in the Indictment.

*Mr. Thomson.* My Lord, I would beg leave to add a very few Words. As to what the Gentlemen for the Prisoner insist on, in point of Law, that this don't amount to levying War; it has been spoke to so fully, that I will not waste your Lordship's Time unnecessarily: The Rule of Law is very plain, that wherever any Number of Persons shall assemble together of their own Heads, without Warrant, pretending a Reformation of what they think an Abuse, this is an invading the Regal Authority; and if that Design is executed, 'tis levying War, and High Treason, in all, as well those that conspired, and were not at the Execution, as those that were aiding in the Execution, and were not in the Conspiracy: As to what is mention'd of pulling down Inclosures, if it be a particular Inclosure, 'tis true, it is only a Riot; but wherever there is an Intent expressed, to pull down one, and then another, and so on, that is levying War, and High Treason. And here you have had a Proof of an Intent to pull down Meeting-Houses, and an actual Execution of that Design in several: Whether this Man knew it or no, is not material; if he is aiding in the Execution of that Treason, which was design'd by others, he, under favour, must be guilty of Treason too. And so is the Case of my Lord *Essex*, which has been mention'd; and so says my Lord *Coke*, in the 3d Report; and my Lord *Hale* himself, in his *Pleas of the Crown*: And this Case goes farther than that in my Lord *Kyling*.

ling, of the Bawdy-Houses, for they were Abuses removable by Law, but these Meeting-Houses are so far tolerated by Law, that 'tis not in the Power (I may take leave to say) even of the Crown, to commission any to suppress them. The Question, my Lord, as to the Fact, is, Whether he has been proved to be aiding and assisting in the Execution of this Design? The Evidence for the Queen has sworn as to several Circumstances; his going to the Meeting-House; bringing out the Sconce; carrying it to the Fire; throwing it in; and going from thence to *Drury-Lane*, to pull down another Meeting-House, at the Head of the Mob, leading them on, and encouraging them to follow him; that they did follow him, and did pull down that Meeting-House: What do they say, my Lord, in Answer? They produce a great many Witnesses, some that are inconsistent with the others, and some that do not deserve much Credit. They say, we are out in point of Time; that he was at the Ale-house 'till half an Hour after Ten, so could not throw the Sconce in the Fire, as the Witness swore. I must observe, that the Witness was positive as to the Man that he saw, and the Fact; but as to the Time, though he at first declared it about Nine or Ten, yet, when pressed as to the Certainty, he answer'd, he could not be positive as to the Time. Then they say, that the Prisoner was driven to the Fire, and that *Wood*, the Witness, was with him, and saw him forced by the Mob. Mrs. *Giles*, another of their Witnesses, says, that *Wood* was not with him when he was going to the Fire. Then, as to the Innocence of his Intentions, 'tis said, the Prisoner left the Alehouse, to help a Gentlewoman in the *Strand*, upon the News of the Fire; but the Postillion, that brought the News, came to him soon after Eight, and the Prisoner did not go then, but staid 'till after Ten, so that is only a Pretence of Excuse, but no real one. Then they say, what he did at the Fire, was not as a free Agent; but by Compulsion: As to that, we have proved, that he did not only hollow, and throw up his Hat and Wig, and Huzza, and make Processions before the Fire, but that he made a Soldier pull off his Hat, and Huzza, and do as he did, which seems to be something different from Compulsion.

My Lord, the other Facts, besides the Sconce, have been proved by so many Witnesses, that it is not very material, whether that be true or not; but even, as to that, the Circumstance of Time is so very trivial, since the Witnesses would not be positive to that, there is little room for doubt of it. However, as to the rest, 'tis very plainly and fully proved, and we submit it to your Lordship and the Jury.

L. C. J. Gentlemen of the Jury; Daniel *Dammaree*, the Prisoner at the Bar, stands indicted for High Treason; for that he, on the First of *March* last, in the Parish of *St. Clement Danes*, did, with a great Multitude of Persons, to the Number of five Hundred, armed with Swords and Clubs, raise and levy publick War against the Queen.

There are two Things insisted on to bring this Matter to two Points by the Council of both Sides; one is as to the Fact, which will be proper for your Consideration, to consider the particular Circumstances: And the other, as to the Law, how far it will amount to High Treason,

and that is what it is the Duty of me, and the other Judges here, to direct you in. I shall first state the Fact as it stands on the Evidence, and then point out, as well as I can, where it will rest for your Consideration; and if I mistake, I am so well assisted, that I am sure it will be set right. As to the Fact; the first Witness produced is *Tolbey*, who don't speak any thing to charge the Prisoner particularly, but gives an Account, that upon the *Tuesday*, the Day before this Matter, for which the Prisoner is indicted, he passing through the *Temple*, saw a great Number of Persons, that had conducted Dr. *Sacheverel* to his Lodgings; there he heard a Discourse of pulling down the Meeting-Houses: Dr. *Burges's* was named, and some were proposing to have it deferr'd 'till after the Trial; but others would have it the next Day. What the Result of that Discourse was, he don't know, for he made no Stay; he passed through them, and left them discoursing.

The next Witness was *Orrel*: He gives a particular Account of the Prisoner, and the Meeting-Houses he had any Concern in the pulling down. He says, (after he had observed something of a great Mob gather'd together, a Night or two before) that he was at a Coffee-House, where Word was brought, that they were pulling down Dr. *Burges's* Meeting-House; he went to see what they were doing; he was in the Meeting-House three or four Times, and went to and fro. He takes Notice, that there was a little Man in the Pulpit, pulling that down, and that appears to be pretty early: That about Ten o'Clock he had Notice of their pulling down another Meeting-House: That he went to *Fetter-Lane*, and there was the Constable insulted to such a Degree, that he was forced to go off: That Meeting-House was pull'd down, and burnt in *Holborn*; the Materials of Mr. *Burges's* were carried into *Lincoln's-Inn-Fields*, and burnt there: That thence he went round, and came into *Lincoln's-Inn-Fields* again, and found them very busy about that Fire. He tells you what Questions were there ask'd, and what Instigations were used one to another: One asked, Where is the Lord *Wharton's*? And others, Where is the *Bank*? And the Cry was, To the City, to the *Bank*, and Damn them, we will have all the Meeting-Houses down; and afterwards, *Dammaree* was one of them that used that Expression himself: That then he took Notice, that from the Middle of the Fields, there divided a small Body, and he took Notice of a pretty tall Man, leading them on: I was then, says he, too far off to distinguish him, but he says, he kept his Eye on him, and coming nearer, he found it was *Dammaree*: That he call'd on them to go to *Drury-Lane*; and that some proposing to go to *Wild-Street*, some of the Company said, That was but a Bird's-Nest, that in *Drury-Lane* was worth a great many of it; *Dammaree*, all the time encouraging, and damning them to come on, and the Cry was, High-Church and *Sacheverel*. Being thus attended, Part of them went towards the Arch; the other Party, which *Dammaree* led, went towards *Great Queen-Street*: That he saw them go into *Great Queen-Street*, and then he saw no more of *Dammaree*. He says, that he went into *Drury-Lane*, and there they had pull'd down another Meeting-House, and were burning it; that the Guards coming thither,



thither, he met them, and told them, the great Body was in *Drury-Lane*: That when he came there, the Guards were resisted by them. One Person he mentions particularly, but it was not thought material to go into that; he drew his Sword, and said, Damn them, he did not care for the Guards, nor the Parliament neither; that there were Swords drawn, the Officers and Soldiers were attack'd, and that they said, They would fight the best of them. *Dammaree* don't appear to be there, for these are the Persons that he had led on, but what was become of him don't appear, but by his own Witnesses. On this, Mr. *Orrel* went away; for there was a Rumour, that a Body was gone to the *Bank*, therefore he thought to lead the Guards thither, that being of greatest Consequence to the Publick; and those Persons that had it in their Heads to go thither, knew they should have given a great Blow to the Credit of the Nation, if they could do any thing there: That he found, instead of that, they were gone to *Black-Friers*: That he call'd on the Captain of the Guard, and shew'd him the way to the Meeting-House there. This is the Account he gives of the Matter.

The next is *Collier*: He says he saw *Dammaree* in *Lincoln's-Inn-Fields*, at the Fire, bring the Branch from the Meeting-House: That he carried it three times round the Fire, in a Sort of Procession, huzzaing, and then threw it in. He gives an Account of something else that was brought there, and carried likewise about in Procession. The first Witness observes, that he threw up his Hat and his Wig both, that you may not mistake him for the Man in his own black Hair; and another being ask'd, What he had in his Hand? said, He had nothing but his Wig, and you will consider, whether the Hair he had on then, was not the short Hair that the other Witnesses speak of.

The next Witness says, that he saw him at the Fire first, about Nine: That he believes he was there two or three Hours; and that he call'd upon them to go away to *Drury-Lane*, and that he went with them that way. As to the Meeting-House in *Drury-Lane*, none say, that they saw him there.

*Still* says, That he saw *Dammaree* in the Alley about Eleven, and says, there was then a Fire in the Fields; and he only says that *Dammaree* hollow'd among the rest: But it may be material, by and by, to consider his being in the Alley about Eleven; for when you consider the Evidence of the Women, of bringing the Branch to the Fire, and that the Fire was dead burnt when they went away: You will then call to mind, that the bringing the Branch was one of the last Things.

*Mitchell* says little more, than that he saw him hollowing, and throwing up his Hat; and that it was about Eleven o'Clock. This therefore only confirms that he was there, and that he was in the Alley.

The next was *Morgan*: He says, that hearing of a great Tumult at the Meeting-House, he went thither, and found them at work, and a Fire was made before he came: That *Dammaree* was there, in his Waterman's Coat, which is a Circumstance all the rest do agree in: That he encouraged the Mob very much: That he walk'd round the Fire with the Bedstead that was thrown in, and some other Things were thrown in afterwards. This Man ask'd them, What they were

doing? the Guards are coming, and they said, Damn the Guards, and the Parliament too, we are ready to face them all. When they enquired where that Man was that spoke of the Guards, (for he was a Discourager of the Business) thereupon he got off, and went away. He says, he saw the Doors of the Meeting-House thrown in, after they had been carried in Procession; and that it might be Half an Hour after Ten, or more.

The next is *Eaton*: He says he saw him at the Fire, and saw several Things brought to the Fire, but did not see him bring any thing. But *Dammaree* appear'd as one of the principal: And that *Dammaree*, and some others, compell'd a Soldier to pull off his Hat, and that *Dammaree* spoke to him particularly; and the Time he speaks of, is about half an Hour after Ten.

This is the Stress of the Evidence for the Queen, by which, supposing that there was nothing said to oppose it, it is fully made out that he was engaged with those other Persons that did pull down Mr. *Burges's* Meeting-House, and assist in carrying the things to the Fire in *Lincoln's-Inn-Fields*, and burning them: That he led them away to *Drury Lane*, and that he and others said they would have all the Meeting-Houses down. There was an Opposition given to the Guards, and you will find that the like was done in other Places.

Now you are on the other hand to consider what Defence is made for the Prisoner, and by that, to weigh what Credit you will give to this Testimony on the Behalf of the Queen. They attempt to give an Account where he was all that Day, and by that they would shew, that the Witnesses produced for the Queen, must be mistaken; because it is impossible he should be there at the time they say he was, for they undertake to shew from Ten in the Morning 'till Eleven at Night, where he was. And another thing they insist on, is, that what he did, was by Force and Violence; tho' they don't deny he was there, yet say they, he did nothing more than the Queen's Witnesses did: They pulled off their Hats, and made the same Outcries for their own Safety. They say likewise, that the Man was in Drink; and I know not what Use they would make of that, whether by way of Excuse of his Crime, or whether it is to shew that he could not do what he is alledged to have done. They call *Allen* and *Pink* to shew where he was in the Morning; they only shew how early they began to drink: And as *Wood* says, he continued it till after Ten at Night.

The next is *Wood*, and he is material, if you can give Credit to what he says: He says, he was at the *Bell* in *Water-Lane* 'till a Quarter after Ten, that there came in News that there was a Fire in the *Strand*, and that was the Reason of *Dammaree's* going out; that he started up, and said there was a Gentlewoman in the *Strand* that was an Acquaintance of his, and he would go and help her; that thereupon he and *Wood* went out to assist this Gentlewoman. It fell out, that as they were going through *Temple-Bar*, there was so great a Multitude that came out of the *Strand*, that they stopt them, and they were carried along with the Stream up *Sheer-Lane* through *Lincoln's-Inn*, through the Wicket, and there the Mob seized him, and would have him along with them. I am sorry, I must

I must needs say, that we are forced sometimes to see such Men brought into a Court of Justice: I would not take Notice of it, were it not flagrant and visible to every body's View. In the first Place, it is inconsistent with itself that he should be going along *Fleet-Street* by the *Temple* at Ten, or between Ten and Eleven, and that there should be so great a Crowd when the Fire had been three Hours before as they would have it. From what Place could this Mob come? There is no Account of any Assembly of a Mob that had been that Way; but if they were stopt from going along, how could they get cross the Street? For it was more easy to go along by the Walls, than to cross the Street; and how could he get into that Stream? he must force himself into it first; and how could that great Crowd get into *Sheer-Lane*? Then in *Lincoln's-Inn* you are got into a large Place, and in that large Square, unless a Man would lay hold on him, it is impossible to drive him through that narrow Passage at the Wicket; then what became of him after, he can't give any Account: Sometimes he went by the dead Wall, sometimes by *Sheer-Lane*, and sometimes by *Chancery-Lane*. Then he is asked where they seized *Dammaree*? He says, against the dead Wall: I believe every body knows there is no dead Wall 'till you come to *Lincoln's-Inn-Fields*, and that he who turn'd on the Left-hand from the Mob, could not see them seize him there. But all that he says is overthrown by the other Witnesses, for they contradict him as to his going to assist this Gentlewoman; no, he staid an Hour after the News: Nay, that you may have an Instance of the Uncertainty of the Computation of Time, that Witness, which is *Bishop*, says, the News was brought him at half an Hour past Eight, and that he staid 'till half an Hour past Ten; and then being asked, How long after the News was brought he went away, he says, about an Hour: And this is an Instance that People are not exact in giving an Hour on such Occasions.

*Fucard* came next: He says only that he was in Drink. But that Part of *Wood's* Evidence, whereby he would have you believe that he went in Kindness to help the Gentlewoman, is contradicted by *Bishop*; for he said, they had a Supper after the News of the Fire; and the Postillion says, that he staid an Hour at least.

*Ward* and *Giles* give this Account: That he was at *Giles's* Shop in *Fleet-Street* about half an Hour after Ten, which is about the Time that he went away from the *Bell*: That he staid there 'till three Quarters of an Hour after; but they both contradict *Wood*, for he says he went with *Dammaree*; but they say, he was not with him. She gives this Account: That they heard there was a Fire in *Lincoln's-Inn-Fields* long before this; that they heard of it about Eight o'Clock, and that about that time they saw two Men with Irons, which they said were the Irons of the Pulpit; and he says, that he knew them; which does prove that the Business. She was ask'd, How she knew him to be the same Man? and I think she gives a good Account of it. She takes Notice of one thing that some asked him, Who he was for? He did not make Answer that he was for *High-Church*, or *Sacheverel*, or any thing of that; but gave a civil Answer: You see who I am for; I am for the Queen.

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*Cummins* says, that he saw a Waterman in the Queen's Coat, and that he saw him receive a Blow on his Head for not taking off his Hat; and that he saw him pushed to and again; and that he seemed to be very drunk; and this he mentions to be about Eleven o'Clock.

The next are *Reading* and *Prince*; they came together, and went together: They say, they saw the Sconce brought by a short Man in his own black Hair, and that this Man had on a Waterman's Coat with a Badge, but they could not distinguish it; they could not distinguish the Colour of the Coat, but his Hair was black, and he a little Man; and tho' they were not near him, yet they were near *Dammaree* soon after. About three Quarters of an Hour after, going homewards, they went towards *Queen-Street*, and there they met *Dammaree*, (that was about Eleven,) coming from *Queen-Street*, and going to the Fire. It seems they had some Talk with him, and he kissed one of them, and they are sure that this is the Man, and there they find him at Eleven. *Cummins* saw him at the Fire at Eleven, and he was with Mrs. *Giles* three Quarters of an Hour after Ten. These Women say, when they observed this short Man, they were without the Mob: when they came to the Fire, there was a great Mob about it; and as you have heard from others of the Witnesses, that there were some Thousands, you may imagine them some Hundreds. They were behind the Mob, and he a short Man: and they were asked how they could see or observe him; they say, they discovered him as they look'd under the Arms of some of the People. You will have some Regard to this Evidence by and by.

The next is *Walker*, who is a Waterman, and says, he took up *Dammaree* at half an Hour after Eleven, for he took Notice of the Clock; and there is Reason to think, that while he was waiting in his Boat, he might observe the Clock: He therefore I believe may be relied on. He says, he carried him cross the Water, and set him down at, or near home; and therefore you may believe he did no more.

*Hales* says, That she met him at the *Strand-Bridge* near Eleven; there could not be much difference in that Time. *Harbins* says, she met him with *Hales*, and it was about Eleven.

This is the Evidence as to the Facts: They have called others to give an Account of his Reputation; and as of the one Side his Reputation is not attempted to be shaken before this time, so they have brought Witnesses to prove him a firm Man to the Church and Queen, and a peaceable Man. He took Notice of the Proceedings of Dr. *Sacheverel*, and as one of the Witnesses says, he wish'd that Sermon had not been printed, and then we had not had this Bustle; and that shews, in that Instance, an Inclination not to be engaged in such a Mob as this. They shew other Instances of his pressing Seamen for the Queen; and this is the Strength of the Evidence on the other Side.

As to the Use they would make of the Difference in point of Time, I would observe that it is difficult to set that right among his own Witnesses; and it is almost impossible to be exact to half an Hour. For *Giles* says, that he came to her Shop at a Quarter after Ten, and the other Witnesses say, he did not leave the Alehouse 'till half an Hour after Ten: But this is no

R r r

Objection.



**Objection.** It is not to be expected that People should be so exact upon such an Occasion; therefore how does this oppose the Evidence of the other Side. If they had not brought some Witnesses themselves to prove he was there, they might as well have used it as an Argument to prove he was not there at all. For they have given an Account of him 'till Eleven; but you must consider what Credit is to be given to some of their own Witnesses, that prove he was there; and then you must consider what Weight is to be laid on the Variance of Time, when all lies in the Compass of about two Hours. You observe too, that they give no Account where he had been when he came from towards *Queen-Street*; for if it be true that he was ill used, for not pulling off his Hat, how comes he to be coming back again to the same Fire? Therefore consider how far they are to be reconciled; for if there is a way to reconcile them all, that will be an Inducement to you to believe they all speak right.

*Collier* says, he saw him bring the Branch, that it was pretty near the time of his going away to *Drury-Lane*, and it was not long before the Time that the Women went away, and met him coming back again: So that tho' it was begun to be rifled at Eight o'Clock, yet by the Evidence of the Women, it appears that the Branch was thrown in between Ten and Eleven; and that is consistent with the Time that he left *Mrs. Giles*. Then if that be so, What is there that contradicts it? Nothing but a Computation in Time, and an easy Supposition sets that right. If they mistook but half an Hour, or an Hour, it sets all right; and it is easy in such a Hurry to mistake it.

*Orrel* says, that *Dammaree* led the Mob towards *Drury-Lane* through *Great Queen-Street*; then when he had done his Work there, and the Guards had dispersed them, he comes back again, and the Consequence is, that those two Women should meet him. This falls in with what the Witnesses say, that he led them towards *Queen-Street* about Eleven, and they say, they met him coming from that way back again, about Eleven; and they don't pretend to give any account of him that way, tho' it might have been as easy for him to do it, as to give an account of himself in *Lincoln's-Inn-Fields*. And if this Man was only forced to throw up his Hat, and Huzza, and got from them as soon as he could, his nearest way to *Strand-Bridge* was not by *Great Queen-Street*; and then how comes he to come back again? But if he set them on in *Drury-Lane*, it was then very proper for him to come back and visit his Friends that he had left in *Lincoln's-Inn-Fields*, and see how the Work he left them to do, went on. Then the time that the Waterman carried him over is right; that after all was done, he should go home; but it don't appear which way he went, and he might do all these things charged, and yet go home at that time.

As to his Defence that he was forced, there is only *Wood*, and the Man that went to see his Apprentice. *Cummins* only saw him receive a Blow for not pulling off his Hat; and says, he was shov'd about by the Mob: But it is plain he was one of them that forced the Soldier to huzza, and pull off his Hat, and there is nothing to contradict that. They take Notice of his

being in drink; it is reasonable to think it was so, but that is not to be any Excuse at all: I believe a great many of those People might be in drink, and that is a fit Preparation for such Enterprizes as these; when Men are going to act so contrary to Law, they ought to prepare themselves for it by Drink, and a little more might carry them to any other Houses; nay, might carry them to *St. James's*. If a Man be guilty of a Crime of so great Consequence, it is no Excuse that he is in drink: It is a Crime that he is in drink; but he was not so far disordered, but he knew what he was about: He could lead them to *Drury-Lane*; tell them that he would have all the Meeting-Houses down, and use proper Words to encourage them: Therefore that Drink, that don't disable him from doing Mischief, must not be an Excuse for doing it.

As to his Reputation, I ought to take Notice to you what I think is the Nature of that Sort of Evidence, and the proper Weight that is to be given to it. When a Man is accused of any Crime that is wicked, or dishonest, and it is not fully proved upon him, but it is in doubt; then his Reputation is of great Moment, because it is not to be thought that a Man of a good Reputation would be guilty of such a Crime as carries Slander with it. But you will consider in the first Place, that *that* is not to prevail against positive Evidence, if you believe the Witnesses: If so, a Man must always escape the first Crime he is guilty of. But there is another unfortunate Circumstance I must observe, that we are in a Time when many People were led into a Belief, that doing these Actions was a commendable Thing; that it was a shewing their Zeal to the Queen and the Church; and I doubt not, but many of them that were concerned in this Matter, were poor mistaken Men, that thought they were doing their Duty, and what did well become them. And if that be the Case, then his Reputation and good Behaviour before is of no Consideration.

It is unhappy indeed, that these Mistakes are propagated; but it is monstrous to see how People may be misled; that they should fall foul on the Dissenters, and pull down the Meeting-Houses, when they are rather the Objects of Pity than Anger. If they are not satisfied with the Establish'd Church, which is the best in the World, and they lose the Benefit and Advantage of that excellent Constitution, they are to be pitied for their Mistake: But why should any one be angry because they do a Prejudice to themselves? But this Matter having been under the Consideration of the Legislature, and there being a Law that allows them the Liberty of serving God in their own way; since that Liberty is allowed them, Why should any body be concerned that they enjoy it? And why should their Meeting-Houses be pulled down? But *Dr. Sacheverel* at that time, (I would not reflect on him; he has undergone a Censure in another Place) when he had fallen foul on the Toleration, and represented it as an Encouragement to *Schism*, and a Ground of Danger to the Church, those People that thought him a Confessor for the Church, thought they could do no less than pull down those Meeting-Houses, which were the Seminaries of *Schism*. And this Doctrine of Non-Resistance, which is cried up

up in all Cases to be the Doctrine of the Church, this Doctrine is to be propagated by Resistance; these People will resist, to shew they are not for resisting, and oppose the Queen's Guards in Vindication of that Doctrine that no body ought to resist: But it shews that when a Madness is got among the People, they can't think as they ought to do, and many unaccountable things will be done; and therefore he might think it no Blemish to his Reputation: And Dr. *Sacheverel*, that has been condemned for those things by the Parliament, and stands convicted of being guilty of them, some People having made it honourable to him, others thought it might be an Honour to them too, to demolish Meeting-Houses, and to raise Seditions and Riots, which are not to be born in a civilized Country; for no body knows where Popular Tumults will end.

This being then the Matter of Fact on both sides, and what there is in Fact, and in Presumption; give me leave to take Notice what the Law is in this Case. For it has been insisted on by the Council for the Prisoner, (and I must do them Right, they have taken into Consideration all the Cases that relate to this matter.) They insist that this is not levying War, and on this Ground, that he was not proved to be at the Meeting-House in *Drury-Lane*, but only at the Fire at Dr. *Burges's*; and if he was only at one Place, one Instance would not make it levying War. If, say they, there had been a general Intention, it would have gone hard with him; there was an Intention the Night before, and Mr. *Burges's* was only mentioned; and it is not certain that there was a general Design to pull down the rest. Nay, he was not there, and it was by accident that he came to *Lincoln's-Inn-Fields*, and he was but at that one Place; and they take notice of some Cases, especially that about the Bawdy-Houses, and that the Lord Chief Justice *Hale* differed from the rest of the Judges.

This is a Matter that has been often under Consideration: The Act of the 25th *Edward* the Third, which is the great Law for Declarations of Treason, declares what shall be adjudged Treason: Compassing or Imagining the Death of the King, and levying War against the King, are two distinct Species of Treason. Now they say, that nothing was design'd against the Queen. If the levying War against the Queen, was there meant only of a War against the Queen's Person, it would have been idle to mention it in that Act, because they had before made the compassing her Death to be Treason.

Now he that levies War, does more than compass and imagine the King's Death; therefore it has been always ruled, that where there is an actual levying of War, which concerns the Person of the King, they lay the Treason to be the compassing the Death of the King, and give a Proof of it by levying War. But there is another levying of War, which is not immediately against the Person of the King, but only between some particular Persons. There is a vast Difference between a Man's going to remove an Annoyance to himself, and going to remove a publick Nuisance, as the Case of the Bawdy-Houses; and the general Intention to pull them down all is the Treason: For if those that were concerned for them, would defend them, and the others would pull them down, there would be a War immediately.

In the Case of Inclosures, where the People of a Town have had Part of their Common inclosed, tho' they have come with a great Force to throw down that Inclosure, yet that is not levying of War; but if any will go to pull down all Inclosures, and make it a general thing to reform that which they think a Nuisance, that necessarily makes a War between all the Lords and the Tenants. A Bawdy-House is a Nuisance, and may be punished as such; and if it be a particular Prejudice to any one, if he himself should go in an unlawful manner to redress that Prejudice, it might be only a Riot; but if he will set up to pull them all down in general, he has taken the Queen's Right out of her Hand: He has made it a general thing, and when they are once up, they may call every Man's House a Bawdy-House; and this is a general thing, it affects the whole Nation.

Now to come to this Instance. If you believe the Evidence, *Dammaree* was concerned in pulling down two Meeting-Houses: He was not present at *Drury-Lane*, that is, he was not proved to be there; but if he set others on to do it, it is his doing, and he as much pulled down that Meeting-House in *Drury-Lane*, as if he had pulled it down with his own Hands. Besides, they tell you his Declaration, that he would have all of them down. Again, these Gentlemen don't seem to deny, but if the Intention were general, it would be levying War: If it were general, where would it end? And it is taking on them the Royal Authority; nay, more, for the Queen can't pull them down till the Law is altered: therefore he has here taken on him not only the Royal Authority, but a Power that no Person in *England* has. It concerns all that are against the Meeting-Houses on one side, and all that are for them on the other, and therefore is levying War.

They said, they would desire this Point to be reserved to them on the account of the Opinion of the Lord Chief Justice *Hale*: But I believe this Matter has been so often settled, that it would be strange for us to depart from such a settled Rule of Law; for these are only the same Arguments that were offered by the Lord Chief Justice, and he offered the same Arguments that were used in Queen *Elizabeth's* Reign; but it was then held to be Treason, and has been held so ever since. His Objection made them consider it then, and they did so; and I suppose they will not expect that it should have more Weight out of their Mouths than out of his. It was then settled, and has been taken for Law at all times since, so that it is not a Matter now to be called in question. And as to the Statute of 13 *Eliz.* the Intention to levy War surely is not an Intention to do a thing, which when it is done, is not levying War.

Thus the Matter stands in Point of Law: I take it to be clear that it is levying War, if you take him to be Guilty of being at one of the Meeting-Places, and leading them, and tempting them to another. Whether that is true, or not, is what must be left to your Consideration. You have heard what has been said, and what Difficulties arise in point of Time, and on the other Proofs: If you are of opinion, that he was present at *Lincoln's-Inn-Fields*, and did encourage them, and acted any otherwise than by Force; if you believe he led, or invited them to another Place, and pull'd down that, then you will find him



him Guilty of High Treason. If you think he was not there, or was under a Compulsion, then he will not be Guilty. As for his being drunk, whether he was so or not, ought not to influence one way or other.

*Cler. of Arr.* Officer, take care of the Jury. Lay your Hand upon the Book. (*Which he did.*)

You shall well and truly keep every one sworn of this Inquest, together in some private and convenient Room, without Meat, Drink, Candle, or Lodging. You shall not suffer any Person whatsoever to speak to them, or any of them, neither shall you yourself speak to them, until such time as they have deliver'd up their Verdict, unless it be to ask them, whether they be agreed of their Verdict. So help you God.

Then the Prisoner was taken away, and the Jury withdrew to the Room provided for them, and after about an Hour's Consultation, agreed upon a Verdict, and coming into Court, were call'd over.

*Cler. of Arr.* Gentlemen of the Jury, answer to your Names. Sir Edward Gould.

Sir Edward Gould. Here. (*And so of the rest.*)

*Cler. of Arr.* John Collis.

John Collis. Here.

*Cler. of Arr.* Gentlemen, Are you agreed of your Verdict?

Omnes. Yes.

*Cler. of Arr.* Who shall say for you?

Omnes. Our Foreman.

*Cler. of Arr.* Set Daniel Dammaree to the Bar.

*Which was done.*

*Cler. of Arr.* Daniel Dammaree, hold up thy Hand.

*Which he did.*

Gentlemen of the Jury, look upon the Prisoner. How say you? Is he Guilty of the High Treason, whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

*Cler. of Newgate.* Look to him, Keeper. Guilty of High Treason.

*Cler. of Arr.* What Goods or Chattels, Lands or Tenements, had he at the time of the High Treason committed, or at any time since?

Foreman. None to our Knowledge.

*Cler. of Arr.* Then hearken to your Verdict, as the Court has recorded it. You say that Daniel Dammaree is Guilty of the High Treason, whereof he stands indicted, and that he had no Goods or Chattels, Lands or Tenements, at the time of the High Treason committed, or at any time since, to your Knowledge: And so you say all.

Omnes. Yes.

*Cler. of Arr.* Gentlemen of the Jury, the Court discharges you, and thanks you for your Service. Cryer, make Proclamation.

Cryer. O Yes, O Yes, O Yes. All manner of Persons, that have any thing more to do at this General Sessions of the Peace, Sessions of Oyer and Terminer, and Goal-Delivery of Newgate, holden for the City of London, Sessions of Oyer and Terminer, and Goal-Delivery of Newgate, holden for the County of Middlesex, may depart hence for this Time, and give their Attendance here again To-morrow Morning at Eight of the Clock.

GOD save the QUEEN.

On Saturday the 21<sup>st</sup> of April, 1710, being the last Day of the Sessions, the Lord Mayor, and Mr. Serjeant Richardson, who acted as Deputy-Recorder, in the Absence of Sir Peter King, Knt. Recorder of the City of London, with several Aldermen, and Justices of the Peace for the County of Middlesex, came into Court about Six in the Evening; and the Court being resumed, the Prisoner, together with Samson Archer, convicted the same Sessions, for stealing a Horse, was brought to the Bar, to receive Judgment: When the Court proceeded thus.

*Cler. of Arr.* Daniel Dammaree, hold up thy Hand.

*Which he did.*

You have been indicted for High Treason, in levying open War within this Kingdom, against Her Majesty; you have pleaded Not Guilty, and have put yourself for Trial upon your Country, which Country have found you Guilty: What can you say for yourself, why the Court should not pronounce Judgment against you, to die according to Law?

Dammaree. My Lord, I ask Pardon of the Queen and the Law, which I confess myself to have offended in a very vile, and unjustifiable manner, and humbly beg, that my Case may be favourably represented to Her Majesty; having no other Dependance, but on Her Royal Mercy.

Mr. Serj. Richardson. Have you any thing to offer by yourself, or Council, which may be of service to you in Arrest of Judgment?

Dammaree. No, my Lord.

Mr. Serj. Richardson. Then call upon the other Prisoner.

*Cler. of Arr.* Samson Archer, hold up thy Hand.

*Which he did.*

You have been indicted for feloniously stealing a bay Gelding, the Property of William Birch: You have pleaded Not Guilty, and put yourself for Trial upon your Country, which Country hath found you Guilty: What can you say for yourself, why the Court should not proceed to give Judgment against you, to die according to Law?

Archer. It is my first Fact, and I pray that I may be transported.

Mr. Serj. Richardson. Is that all you have to say?

Archer. Yes, my Lord.

*Cler. of Arr.* Then, Cryer, make Proclamation.

Cryer. O Yes. All manner of Persons are commanded to keep Silence, while Judgment is giving, upon pain of Imprisonment.

Mr. Serj. Richardson. You that are the Prisoners at the Bar, you have pass'd your Trials for capital Offences, of which you have been severally indicted: You have had patient Hearings: One of you has had the Assistance of Council of great Skill and Ability, and all the Liberty and Indulgence you could, in reason, desire or wish for; but your Guilt was so plain and evident, that every one, that heard your Trials, must admit, that you stand justly convicted by the Verdict of your Country. Your Crimes, as they are various in their Natures, so they subject you to different Punishments; but your Sentences have this fatal Similitude, that they both terminate in Death: which, though terrible in its nature,

ture, must of absolute necessity be inflicted by the Civil Magistrate, where the publick Peace is rebelliously broke, or private Property notoriously invaded. Without these penal Sanctions, it is impossible that Order and good Government should subsist in any Nation; and how movingly soever your present melancholy Situation may plead for Pity and Compassion, yet the Good of the whole, and the Protection of the Innocent, are Considerations of much higher Importance: And you have the less to offer for yourselves, since the nature of the Crimes you have committed is such, as that they must be the Effects of very vicious Principles, or extravagant Passions: One of you hath offer'd Violence to a Body of People, whom the Law has thought fit to tolerate; and your manner of proceeding was attended with such desperate Circumstances of Terror and Mischievousness, as threaten'd Destruction and Desolation to an innocent Neighbourhood, when to your own malicious Actions you added the Fury of an Element more cruel and merciless than yourself. You have indeed endeavour'd to excuse yourself by pleading, that your Crime was the Effect of drinking, which is a much weaker Defence than your Fellow Prisoner makes, who says, he robb'd out of Necessity. Neither of these Cases will justify a Breach of the Law in the least degree, much less will it excuse High Treason, or Felony. The necessitous Person indeed has a fairer Claim to Pity, than the Drunkard; for the latter voluntarily weakens his Reason, and inflames his Passions; and by that very Action is guilty of an Offence against common Decency, and the Laws of the Land; while it is possible the Misfortunes of the other may be unavoidable, though they are too often the Consequences of Idleness, Extravagance, and Debauchery. We live in a Trading Country, and, I believe, there are few Instances, where a Man in Health, and of an honest Character, may not earn the Bread of Industry, and eat it in Security. It was for this Purpose, for the Security of the Innocent, that the very Laws were made by which you are now to suffer: And as these Laws are founded upon an higher Institution, even the Laws of God; you will do well to consider yourselves as Offenders against the Laws of your Maker, and accountable not only for these Crimes, but for every Action of your Lives, at a higher Tribunal, at which you are likely to appear in a short time, perhaps in a few Days. Upon these Considerations, the Lenity of our Constitution gives a short Respite to Persons in your deplorable Circumstances; and this City provides a Clergyman, whose Profession and Experience enable him to advise and assist you in making a proper Preparation against your approaching Change; to which important Prepa-

ration I shall dismiss you, having first discharged the Court of the Duty incumbent upon it, by pronouncing the several Sentences the Law has appointed.

You *Daniel Dammaree*, having been convicted of High Treason, the Judgment of the Law is, and the Court doth award:

That you be carried from hence to the Place from whence you came; and from thence be drawn upon an Hurdle, to the Place of Execution, where you shall be hang'd by the Neck, 'till you are almost dead; and being alive, you shall be cut down; your privy Members shall be cut off; and your Bowels taken out, and burnt before your Face: That your Head be sever'd from your Body, and your Body divided into four Quarters: Your Head and Quarters to be dispos'd as the Queen shall appoint. And the Lord have Mercy upon your Soul.

And you *Samson Archer*, having been convicted of Felony, without the Benefit of Clergy; the Judgment of the Law upon you is, and it is awarded by the Court:

That you return from hence to the Place from whence you came, and that from thence you be convey'd to the Place of Execution; where you are to be hang'd by the Neck 'till you are dead; and the Lord have Mercy upon your Soul.

*Dammaree*. My Lord, I desire my Wife and Children may have Liberty to come and see me in Prison, in the Absence of the Keeper.

*Mr. Serj. Richardson*. As for seeing your Wife and Children, that we don't deny you; but we can't allow them to be alone with you, because it may occasion an Escape.

*Dammaree*. My Lord, if any other Minister will be so kind as to visit me in my Distress, I hope it will be permitted.

*Mr. Serj. Richardson*. Ay, by all means. 'Tis a Liberty that, I think, was never refused. You shall have all the Favour that is usually shewn to Persons in your Condition.

Then the Prisoner was taken away, and the Court proceeded to the other Business of the Sessions; and afterwards adjourn'd to *Wednesday* the 25th of *May* following.

*Upon the Report of the Prisoners Cases to the Queen, they both were reprieved; and some time after Dammaree received Her most gracious Pardon.*





LVII. *The Trial of Francis Willis, a Footman, for High Treason, in levying open War against Her Majesty, in the Kingdom, under Pretence of pulling down Meeting-Houses.*  
9 Annæ, 1710.

[ *At the Sessions-House in the Old-Baily.* ]

*Domina Regina versus Willis.*

*Die Veneris Vicefimo die Aprilis Anno Domini & Regine prædictæ.*

THE Court being resumed, as in the Trial of *Dammaree*, and the same Judges being present.

*Cler. of Arr. Middlesex Cryer*, make Proclamation.

*Cryer.* O Yes, O Yes; You good Men of the County of *Middlesex*, summon'd to appear here this Day, to try between our Sovereign Lady the Queen, and the Prisoners that shall be at the Bar, answer to your Names as you shall be call'd, every Man at the first Call, upon Pain and Peril shall fall thereon.

*Then the Jury that were return'd on the Pannel, were all call'd over, and the Appearances of all those that answer'd to the Call, were recorded.*

*Cler. of Arr.* Set *Francis Willis* to the Bar.  
*Which was done.*

*Cler. of Arr. Francis Willis*, hold up thy Hand.  
*Which he did.*

*Cler. of Arr.* You the Prisoner at the Bar, these good Men, whom you shall hear call'd, and do now personally appear, are to pass between our Sovereign Lady the Queen and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to speak to them as they come to the Book to be Sworn, and before they be Sworn.

*Willis.* My Lord, I desire that none of the Gentlemen that served upon the Jury Yesterday, may be sworn now.

*L. C. J.* You have a Right to challenge Five and Thirty peremptorily, without shewing Cause; and as many more as you can shew good Cause against. If any of the Jury that served Yesterday, appear now, it will be a proper time to take the Exception.

*Mr. Darnell.* My Lord, I take it, the Prisoner's Intent by this Motion, is to save the Time of the Court. He does not intend to make any Challenges, but to the Jury of Yesterday, whom he conceives, in some measure, to have declared their Opinions upon the Fact already; and therefore desires the Clerk may pass over their Names as they stand upon the Pannel.

*L. C. J.* Let it be so.

*Cler. of Arr. Thomas Nicholls*, Esq;  
*Who appear'd.*

*Cler. of Arr.* Hold *Mr. Nicholls* the Book.

You shall well and truly Try, and true Deliverance make between our Sovereign Lady the Queen, and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence. So help you God.

*Cler. of Arr. Joseph Spencer.*

*He appear'd, and was Sworn.*

In like manner the other Ten Gentlemen appear'd, and were sworn, whose Names follow :

JURY.

<i>Thomas Nicholls</i> , Esq;	<i>William Breakspear</i> ,
<i>Joseph Spencer</i> ,	<i>Charles Gardner</i> ,
<i>John Parsons</i> ,	<i>Richard Hazzard</i> ,
<i>William Hargrave</i> ,	<i>Samuel Brown</i> ,
<i>John Mills</i> ,	<i>Francis Higgins</i> ,
<i>Thomas Phillips</i> ,	<i>Daniel Browne</i> .

*Cler. of Arr. Cryer*, count these.

*Thomas Nicholls.*

*Cryer.* One, and so of the rest.

*Cler. of Arr. Daniel Browne.*

*Cryer.* Twelve, good Men and true, stand together, and hear your Evidence.

Are you all Sworn, Gentlemen?

*Cler. of Arr. Cryer*, make Proclamation.

*Cryer.* O Yes, If any one can inform my Lords the Queen's Justices, the Queen's Serjeant, the Queen's Attorney-General, or this Inquest now to be taken, of the High Treason of which the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance; and all others that are bound by Recognizance, to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance. And all Jurymen of *Middlesex* that have appear'd, and are not sworn, may depart the Court for this Time, and give their Attendance here again to Morrow Morning.

*Cler. of Arr. Francis Willis*, hold up thy Hand.

*Which he did.*

Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Francis Willis*, late of the Parish of *St. Andrew Holborn*, in the County of *Middlesex*, Labourer, for that he not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, &c. (prout in the Indictment, mutatis mutandis,) against the Peace of our Sovereign Lady the Queen,

her

ber Crown and Dignity, and against the Form of the Statute in that Case made and provided. Upon this Indictment he has been arraign'd, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to enquire whether he be Guilty of the High Treason whereof he stands indicted, in Manner and Form as he stands indicted, or Not Guilty. If you find him Guilty, you are to enquire what Goods and Chattels, Lands and Tenements he had at the time of the High Treason committed, or at any time sithence. If you find him Not Guilty, you are to enquire whether he fled for it: If you find that he fled for it, you are to enquire of his Goods and Chattels, Lands and Tenements, as if you had found him Guilty. If you find him Not Guilty, nor that he fled for it, you are to say so, and no more, and hear your Evidence.

Mr. Thomson. May it please your Lordship, and you Gentlemen of the Jury, Francis Willis, the Prisoner at the Bar, stands indicted, for that he, not having the Fear of God before his Eyes, but being moved by the Instigation of the Devil, and designing to withdraw the cordial Love and natural Obedience, which true and faithful Subjects of our Sovereign Lady the Queen do and ought to bear towards Her, and intending to disturb the Peace and common Tranquillity of this Kingdom, on the First of March last, in the Parish of St. Andrew Holborn, in the County of Middlesex, traiterously compass'd and imagin'd to levy War, and stir up Rebellion and Insurrection against our said Lady the Queen within this Kingdom: And that he might accomplish his said traiterous Imaginations and Designs, on the said First of March, and in the said Parish being assembled, with a Multitude and great Number of People, armed and arrayed in a warlike Manner, he did then and there unlawfully and traiterously levy War against our said Lady the Queen, contrary to the Duty of his Allegiance, against the Peace of our said Lady the Queen, her Crown and Dignity.

To this Indictment he has pleaded Not Guilty.

Gentlemen, we shall call the Evidence for the Queen, and if they prove the Charge, as laid in the Indictment, we doubt not but you will find him Guilty.

Mr. Att. Gen. My Lord, the Prisoner at the Bar stands charged by this Indictment for being one of those wicked rebellious Persons, that had so little Concern for Her Majesty, and his Fellow Subjects, that upon the First Day of March last, he assembled with a great Number of other seditious and rebellious Persons, to the Disturbance of the Peace of the Queen, and her Subjects. It is surprising to consider, that under the Reign of a Prince, so good as Her Majesty, any should be found so wicked, as to be liable to be charged with such a Crime as this: when the Courts are open and free, to punish any that offend against the Laws of the Land, that it should be thought necessary for such a Number of People to get together, to do what is the Duty of the Magistrate, and for them to take upon them to punish Offenders: But we know there are some that would bring all things into Confusion, and the way to do it, is to proceed in this manner. It is not difficult, indeed, to know what

the Designs of these People were; you will hear it was pretended to be a Design to pull down the Meeting-Houses, that is, the Houses of those People that are unhappy enough to dissent from the Church. We shall shew that this was a Design formed before, and resolved to be executed the First of March: That it was resolved by a great Number of People met at the Temple, that the Night following, they would destroy the Meeting-Houses thereabout: That in execution of this Design, there were, in several Parts of this County, great Numbers got together, and that they did make Assaults on divers of Her Majesty's Subjects, and did pull down many Meeting-Houses, gut them, as they call it, and bring the Materials to their Fires, and there destroy them. We shall shew that this Man was not only at one, but at several of these Bonfires; that he was there not as a Spectator, but active, and had the Vanity to be a Captain of the Mob; that he had got a Curtain belonging to the Meeting-House in Fetter-Lane, that he put it upon a Pole, and carried it at the Head of the Mob; that he came from that Place to another Fire in Hatton-Garden, and was active in throwing the Timber into the Fire there. When we have proved this Fact upon him, that he was concerned in this manner, your Lordship will direct the Gentlemen of the Jury, that this Meeting together with Force, to work a Reformation in the State, in order to pull down the Meeting-Houses, that this will amount to levying War, and High Treason, as it is laid in the Indictment.

Mr. Soll. Gen. My Lord, the Charge in the Indictment has been fully opened, I shall only call the Witnesses; and if we prove the Fact, I take it to be clear, that it is levying War within the Statute of the 25th of Edward the IIIrd.

Then Thomas Tolboy was sworn.

Mr. Soll. Gen. Pray acquaint my Lord, and the Jury, what you know of any Design to pull down the Meeting-Houses.

T. Tolboy. My Lord, as I went through the Temple, on Tuesday the Twenty-eighth of February, I saw there a great Mob, a great many thousands, and I heard them consult of demolishing Mr. Burges's Meeting-House.

Mr. Soll. Gen. What was the Occasion of their being at the Temple?

T. Tolboy. They came with Dr. Sacheverel's Coach home from Westminster.

Mr. Soll. Gen. When was this to be done?

T. Tolboy. It was to be done the next Night.

Mr. Soll. Gen. You heard this Discourse among them; was Mr. Burges's Meeting-House pulled down the next Night?

T. Tolboy. Yes.

Mr. Soll. Gen. Were there any others pulled down?

T. Tolboy. I have been informed so; but I don't know myself.

Mr. Darnell. Was the Talk particularly about Mr. Burges's, or were any others mentioned?

T. Tolboy. Mr. Burges's was mentioned; I don't remember any other mentioned.

L. C. J. You say no other was named. Was there any Discourse of Meeting-Houses in general?

T. Tolboy. I don't remember any but his mentioned. Some said, we will go presently and pull down Dr. Burges's Meeting-House; others were



were for deferring it 'till the Morrow Night; and others, 'till the Event of the Doctor's Trial.

*Then John Lunt was sworn.*

Mr. Att. Gen. Look upon the Prisoner, and tell us if you know him.

J. Lunt. My Lord, I stood within my own Door in Kirby-Street, that Night that the Mob was, and about Eleven at Night, he came over-against my Door, and spoke these Words, *They made me Captain of a Party to Night.*

Mr. Darnell. My Lord, I must object against his giving in Evidence what the Prisoner told him.

Mr. Soll. Gen. Surely it is Evidence what a Man says.

Mr. Att. Gen. You say you know him; do you remember you saw him on Wednesday, the First of March last?

J. Lunt. I forgot the Night: It was the Night the Meeting-House was pulled down in Hatton-Garden.

Mr. Att. Gen. Did you see him alone, or were there others with him?

J. Lunt. He came right against my Door, and no body spoke to him as I saw; but he said, *They had made him Captain of a Party that Night.*

Mr. Att. Gen. Stay, we will call another first.

*Then William Grove was sworn.*

Mr. Att. Gen. Pray acquaint my Lord, and the Jury, whether you saw the Prisoner the First of March last.

W. Grove. I never saw him 'till that Night. I saw him with a long Pole, and a Curtain upon it, and he cried out, *A High-Church Standard*; he stopp'd several Coaches, and got Money from them, and made them cry, *High-Church*. But to swear that this is the Man, I can't.

Mr. Att. Gen. How many were there together?

W. Grove. Five or Six hundred.

Mr. Att. Gen. Was there any thing like Colours before them?

W. Grove. Yes, there was a Curtain, and he that carried it, cried, *High-Church Standard*; he stopp'd many Coaches, and got Money from them, and made them cry, *High-Church*.

Mr. Soll. Gen. Whence did he bring it?

W. Grove. From Mr. Bradbury's Meeting, in Fetter-Lane.

Mr. Soll. Gen. Did he carry it no where else?

W. Grove. I saw it no where but at the Fire at Holborn.

Mr. Soll. Gen. Was there any Fire in Hatton-Garden?

W. Grove. Yes, there were three.

Mr. Soll. Gen. What were they made of?

W. Grove. Of the Materials of Mr. Taylor's Meeting-House.

Mr. Soll. Gen. Do you know of any others that were pulled down?

W. Grove. Yes, Mr. Burgess's.

Mr. Soll. Gen. Do you know of any others?

W. Grove. I have heard of others, but don't know them.

Mr. Att. Gen. After Willis was taken, you went to Newgate; now give an Account, did you make any particular Observations at the Time you saw the Man display the Banner? Did you take any Notice of him?

W. Grove. Yes.

Mr. Att. Gen. What did you take Notice of him?

W. Grove. I took such Notice, that I thought I should know him again.

Mr. Att. Gen. Now, did you go to Newgate to see him?

W. Grove. Yes, but the Place was dark, and his Cloaths and Wig were altered.

Mr. Att. Gen. What did you think of the Man you saw in Newgate?

W. Grove. I did think it was the same Man.

Mr. Att. Gen. Now look at him, and see whether this is the same you saw in Newgate?

W. Grove. His Cloaths are so much altered, that I can't tell.

Mr. Att. Gen. Tell us, is that Man the same?

W. Grove. I never saw him but that Night, and in Newgate; and it was so dark, that I can't say this is the Man.

Mr. Soll. Gen. Do you remember what Cloaths he had?

W. Grove. I can't tell whether they were Blue, or Green.

Mr. Soll. Gen. Were there more that flourished Colours; more than one?

W. Grove. I saw but one.

Mr. Darnell. Pray, at the time you saw that Banner displayed, was there any other Fire in Hatton-Garden?

W. Grove. No; I believe this was made first; and then the Mob said, they would go to Mr. Taylor's.

Mr. Darnell. What time was it that the Fire was in Holborn?

W. Grove. About Ten.

Mr. Darnell. What time was that in Hatton-Garden?

W. Grove. About Eleven.

Mr. Darnell. You say this Curtain was brought out of Fetter-Lane Meeting. How do you know? Did you see it brought out of the Meeting?

W. Grove. No. But I saw it brought out of the Lane, and the People said it came from thence.

Mr. Darnell. Do you remember what coloured Coat he had on?

W. Grove. I can't tell; it was either Blue, or Green.

Mr. Darnell. Do you remember what Sort of Hat he had on?

W. Grove. No.

Mr. Darnell. Was it a laced Hat, or a plain one?

W. Grove. I can't tell indeed.

Mr. Darnell. You say you looked hard at him.

W. Grove. Yes, but I never minded his Hat.

Mr. Soll. Gen. You heard People say the Curtain was taken out of Mr. Bradbury's Meeting: Who were they that said so? The People that were concerned in the Fire, or them that stood by?

W. Grove. Them that stood by, as I might.

L. C. Baron. You say you went to Newgate shortly after this, to see this Man.

W. Grove. Yes, my Lord.

L. C. Baron. And the Man that you saw there, do you believe, or do you not, to be the Prisoner at the Bar?

W. Grove. Yes, I do believe it was.

Mr. Darnell. Are you positive this is the Man?

W. Grove.

*W. Grove.* No, I am not.

*L. C. J.* When you went to *Newgate*, the Man that you then saw there, did you believe him to be the Person that you saw displaying the Colours?

*W. Grove.* Yes, I did.

*L. C. J.* How long was that, after you saw him at the Fire?

*W. Grove.* About ten Days.

*L. C. Baron.* Pray what makes you less knowing, or believing now, than you was then?

*W. Grove.* My Lord, his Cloaths are altered, and he has another Wig on.

*Mr. Darnell.* Pray tell us any one thing you had, to know this Man by?

*W. Grove.* No other Instance, but that he flourished the Colours.

*Mr. Darnell.* Do you know the Colour of his Coat?

*W. Grove.* I believe it was blue.

*Mr. Darnell.* Are you sure it was not green?

*W. Grove.* I am not sure.

*Mr. Darnell.* When you saw him in *Newgate*, what did you know him by?

*W. Grove.* By his Features, I thought he was the same Man.

*Mr. Darnell.* Pray describe any one Feature you knew him by.

*L. C. J.* It is difficult to describe a Man's Face, and so it is to describe his Hand. If you were asked how you know a Man's Hand? it would be difficult for you to describe it; and so if you were asked, how you know any Man's Face in Court, unless there was something very particular in his Face; and yet there is something in the Composition of a Face, by which it is known, which none perhaps but a Painter can describe.

*Mr. Soll. Gen.* You say he is altered from what he was in *Newgate*? Has he not the same Cloaths on?

*W. Grove.* He has quite another Dress, and another Wig, he had blue Cloaths on there.

*Mr. Soll. Gen.* And you say, you believe the Man that had the Colours, had blue Cloaths?

*W. Grove.* Yes, indeed I take them to be blue, but can't be positive whether they were blue, or green.

*Mr. Soll. Gen.* You have spoke about this Matter already, on your Examination, you have formerly considered it coolly, you ought to consider what you have said before, and to recollect yourself. The Man you saw in *Newgate*, What Coat had he on?

*W. Grove.* He had blue.

*Mr. Soll. Gen.* I ask you whether the Man that flourished the Colours, had blue?

*W. Grove.* It was blue or green.

*Mr. Soll. Gen.* Which of the Two do you believe it to be?

*W. Grove.* Indeed I can't well tell.

*Mr. Soll. Gen.* The Man in *Newgate*, What kind of Wig had he?

*W. Grove.* A Wig that fell more off from his Face.

*Mr. Soll. Gen.* What sort of Wig had the Man with the Colours? Was it that kind of Wig which the Man had in *Newgate*?

*W. Grove.* I think it was not.

*Mr. Soll. Gen.* Do you believe this Man to be him that you saw in *Newgate*?

*W. Grove.* Indeed I can't believe him to be the same.

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*Mr. Soll. Gen.* Pray who brought that Man to you?

*W. Grove.* It was *Mr. Hill*, the Keeper.

*Mr. Soll. Gen.* Is he here? Let him be called.

*Then Mr. Hill was sworn.*

*Mr. Att. Gen.* Do you remember *Mr. Grove's* coming to see the Prisoner in *Newgate*?

*Hill.* I never saw any body come while I was there.

*Mr. Soll. Gen.* Do you remember that he came to see any of the Prisoners?

*W. Grove.* Justice *Blackerby's* Clerk came with me, and we had a Quartern of Brandy.

*Hill.* I did not remember him before, but I remember Justice *Blackerby's* Clerk came, and somebody with him.

*Mr. Soll. Gen.* Who did you shew him?

*Hill.* The Prisoner at the Bar.

*Mr. Soll. Gen.* What Dress was he in then? Do you remember?

*Hill.* No.

*Mr. Soll. Gen.* Did you carry him to any other but the Prisoner?

*Hill.* No, there were others upon the Stairs; but they were Women.

*Mr. Soll. Gen.* Was there any other Prisoner?

*Hill.* No.

*Mr. Soll. Gen.* And is this the Man?

*Hill.* Yes.

*L. C. J.* Do you remember what Cloaths he had, when he first came to *Newgate*; or at any time after?

*Hill.* I don't know any but them he has on; I was not in the Way when he came in.

*Mr. Darnell.* Did you go up with that Man?

*Hill.* Yes.

*Mr. Darnell.* Did you go into the Room where the Prisoner was?

*Hill.* I went to the Grates.

*Mr. Att. Gen.* When I asked you, at first whether he was at *Newgate*; you could not remember till he refresh'd your Memory with a Quartern of Brandy.

*L. C. J.* Are you sure you shew'd him the Prisoner at the Bar?

*Hill.* Yes.

*L. C. J.* Did you shew him any other?

*Hill.* No.

*Mr. Darnell.* You say you never saw him in any other Cloaths than those he has on?

*Hill.* No, never; I was not there when he came in.

*Then Hugh Victor was sworn.*

*Mr. Soll. Gen.* Pray acquaint my Lord, and the Jury, what you know of the pulling down the Meeting-Houses, and what Concern the Prisoner had in it?

*H. Victor.* I was by at a Neighbour's Door, near the Meeting-House in *Leather-Lane*.

*Mr. Soll. Gen.* Where was the Mob then?

*H. Victor.* They came out of *Holborn* to *Leather-Lane*.

*Mr. Soll. Gen.* Was the Bonfire in *Holborn* made before that in *Leather-Lane*?

*H. Victor.* Yes.

*Mr. Soll. Gen.* That Fire in *Holborn*, what was it made of?

*H. Victor.* I can't tell any thing of that.

*Mr. Soll. Gen.* When the Mob came into *Fetter-Lane*, what did they do?

*T t t*

*H. Victor.*



*H. Viſtor.* I believe I ſaw one hundred and fifty Men there, and they were as hard at work as they could be, in breaking down the Inſide of the Meeting-Houſe.

*Mr. Sol. Gen.* What did they do with the Materials?

*H. Viſtor.* I ſaw ſome of them, as I think, on that young Man's Back. When the thing was almoſt over, I went near Mr. Lunt's Door, and I ſaw him with ſome Boards on his Shoulders.

*Mr. Att. Gen.* Look upon him: Are you ſure that is the Man?

*H. Viſtor.* Yes.

*Mr. Att. Gen.* What did he do?

*H. Viſtor.* I ſaw upon his Shoulders ſome Wood; he carried it to the Fire, and threw it in, and made an Huzza: When he had done, he came up again, and ſpoke ſome Words to Mr. Lunt.

*Mr. Att. Gen.* Did that ſame Man afterwards come up, and ſpeak to Mr. Lunt?

*H. Viſtor.* Yes; but what he ſaid I can't tell.

*Mr. Sol. Gen.* Do you know what Cloaths he had on?

*H. Viſtor.* I don't know his Cloaths, but I can remember him from a thouſand: I ſaw him throw in the Wood, and after he went from the Fire, I kept my Eye on him 'till he came up to Mr. Lunt's Door, and I aſk'd Mr. Lunt, if he knew him? He ſaid, Yes, he was Mr. Miles's Man.

*Mr. Darnell.* What did you take notice of him by?

*H. Viſtor.* I know him by his Face, though I never ſaw him before.

*Mr. Darnell.* What is there remarkable in it?

*H. Viſtor.* I obſerved him as he threw in the Wood, and kept my Eye on him, 'till he came to Mr. Lunt's.

*Mr. Darnell.* What Cloaths had he on?

*H. Viſtor.* He was in a Livery, but what ſort of Livery I can't tell.

*Mr. Darnell.* When did you ſee him again?

*H. Viſtor.* The next Night: I knew him when I ſaw him before the Juſtice.

*Mr. Att. Gen.* Are you ſure, that the Man you ſaw that Night, and the next Night, is the ſame Man?

*H. Viſtor.* Yes.

*Mr. Darnell.* Was it not dark?

*H. Viſtor.* There was the Light of the Fire.

*Mr. Darnell.* Did you ſee him by no other Light than the Fire?

*H. Viſtor.* No.

*Mr. Darnell.* How far was he from it?

*H. Viſtor.* As far as to the other ſide the Way.

*Mr. Darnell.* Were there not a great many People there then?

*H. Viſtor.* Not ſo many as there had been at firſt; they were drawing away.

*Mr. Darnell.* Which Fire was this at? At Hatton-Garden, or Holborn?

*H. Viſtor.* At Hatton-Garden.

*Mr. Sol. Gen.* You ſay you ſaw him at Mr. Lunt's Door, and there you took notice of him; How far was the Fire from his Door?

*H. Viſtor.* As far as to the middle of the Yard.

*Then Mr. Lunt was ſworn.*

*Mr. Att. Gen.* Your Houſe, I think, is near where the Fire was?

*Lunt.* Yes; within three Doors.

*Mr. Att. Gen.* What time was the Fire?

*Lunt.* About Eleven o'Clock.

*Mr. Att. Gen.* Was there a great Number of People there?

*Lunt.* Yes.

*Mr. Att. Gen.* What was thrown into the Fire?

*Lunt.* I can't tell; I did not ſo much as go out of my Door.

*Mr. Att. Gen.* Did you ſee the Priſoner that Night?

*Lunt.* He came right againſt my Door: He knew me, for I work'd for his Maſter. He came againſt my Door, and ſpoke two or three Words, but I gave him no Answer.

*Mr. Att. Gen.* Is this the Man that Mr. Viſtor aſk'd you, whether you knew him?

*Lunt.* As he had ſpoke thoſe Words to me, Mr. Viſtor aſk'd me, if I knew him: I ſaid, Yes, he is Mr. Miles's Man. My Boy call'd him by his Name, and ſaid, What, Frank, are you among them? And that made Mr. Viſtor aſk, If I knew him?

*Mr. Sol. Gen.* What paſs'd between you and him?

*Mr. Darnell.* My Lord, we humbly ſubmit it, that what he has ſaid, cannot be made uſe of againſt him; for the Statute of the ſeventh of King William directs, that he ſhall not have any Evidence given againſt him relating to his Word, for the Act directs, that after the 25th of March, 1696, no Perſon ſhall be attain'd of High Treason whereby Corruption of Blood may be made, or of Miſprifion of ſuch Treason, but by the Oaths and Teſtimony of two lawful Witneſſes, either both to the ſame Overt-Act, or one to one, and the other to another Overt-Act of the ſame Treason, unleſs the Party willingly, in open Court, confeſs the ſame, or ſtand mute, &c.

*L. C. J.* Where do you find in that Act, that what he confeſſes is not to be given in Evidence?

*Mr. Darnell.* Becauſe that Act provides, that none ſhall be tried, but upon the Oaths of two Witneſſes to an Overt-Act. Unleſs the Perſon ſhall confeſs in open Court, he ſhall be tried by the Oaths of Witneſſes to an Overt-Act. Now to what he has done they may call Witneſſes; but to what he has ſaid, we hope they ſhall not. Confeſſions are, in all Caſes, a dangerous Evidence, and to be uſed very cautiously. It has been diſputed, and ſo is the Caſe in *Anderson*, Whether any Examinations ſhall be uſed againſt them, but thoſe which are before a Magiſtrate?

*Mr. Juſtice Tracy.* It was quite otherwiſe in the Caſe of Capt. *Smith*. The Queſtion is only, Whether he ſhall be convicted upon that Proof alone?

*L. C. J.* If you make any Objection on this Head, it will be proper when they cloſe their Evidence: If there is no other Evidence, you may then make this Objection, Whether he ſhall be convicted on that Evidence ſingly. Suppose two Witneſſes prove an Overt-Act, and beſides them there ſhould be others to prove his Confeſſion, Is not that Act comply'd with, when ſome prove the Fact, and others come in Confirmation of them? It don't follow but that if there be two Witneſſes to Overt-Acts, there may be as many others to prove Confeſſions: It don't ſay, that no Evidence ſhall be given but of Overt-Acts.

*L. C. Baron.* If a Man confeſſes before a Magiſtrate, that he is guilty of Treason, and that Confeſſion of his ſhould be proved by two Witneſſes,

nesses, it may be disputed, whether he shall be convicted on that Evidence, because it is said, there must be two Witnesses to an Overt-Act. If they have no other Evidence but his Confession, then will be a proper Time to make your Objection; but 'till then, there is no reason to object against what is now offer'd.

Mr. Darnell. It is expressly the Words of the Book, that Examinations before a Magistrate shall be Evidence, which seems to imply the Negative, that others shall not be.

Mr. Soll. Gen. The Question was, Whether that Confession was sufficient to convict? And not, Whether it should be given in Evidence? Let us go on; if our Evidence is not sufficient; you will take Notice of it.

Mr. Att. Gen. Mr. Darnell would stop the Witness; as if there was something in that Act; or in the Law, that shall restrain you from hearing what this Man did confess of this Fact: No surely, there is nothing that can hinder that Evidence. The Act don't hinder any thing in point of Evidence, when it says, you shall not convict a Man unless there be two Witnesses to the Fact: It don't say you shall hear no other Evidence. This indeed was mention'd in the Case of Capt. Smith: He had the French King's Commission, and it was lost among other Papers: He was shewn the Parchment, and own'd it, and that Confession of his, that he had such Commission, was given in Evidence.

Mr. Soll. Gen. According to this Objection, he would exclude all Confessions from being Evidence. He opposes our examining to the Confession of the Prisoner, before he knows what it was that he did confess. Now this Act was never intended to exclude all Evidence to Confessions; all that it requires, is to have two Witnesses to Overt-Acts. The Question is not now, Whether a Confession shall be an Evidence of an Overt-Act? but Whether any Confession whatsoever may be given in Evidence? And surely it was agreed in the Case of Captain Smith, that his Confession, as to the Circumstances, was Evidence, but not as to the Overt-Act. On the Trial of Ball\*, the Question was, Whether he was an Englishman? His Confession was Evidence to that Purpose, admitting it was not to the Overt-Act. We shall not call this Man to prove a Confession of an Overt-Act, but to prove his Confession in general, what was the Occasion of his being abroad that Night, and that is proper Evidence; for this Tumult must be either a Riot, or levying War, according to the Intention of those that got together: What shall explain that Intention, but the Confession and Declaration of the People that were got together? So that we hope we are proper to examine to this Point.

Mr. Darnell. I remember the Case of Captain Smith: I remember they brought some that knew the Hand of the Admiral of France, to prove, that they saw his Hand to the Commission; but his Confession was not admitted as Evidence.

Mr. Justice Tracy. I never knew it disputed, but a Man's Confession might be given in Evidence.

Mr. Darnell. The Act says, he shall not be tried, but on the Oaths of two Witnesses, to an Overt-Act, unless the Party willingly, in open Court, confess the same, which shews what Confession it is that is to be admitted of.

L. C. J. Then you say, no Confession shall be given in Evidence: Now pray, What Words are there in the Act, that say no Confession shall be given in Evidence.

L. C. Baron. A Confession shall not supply the want of a Witness; there shall be two Witnesses to the Treason notwithstanding: But to say it shall not be given in Evidence, there is no ground for it.

Mr. Att. Gen. Mr. Lunt, pray tell us what was it that pass'd between you and the Prisoner.

Lunt. All that he said to me, when he came before my Door, was, that they made him Captain of a Party that Night; that he took a Piece of a Window-Curtain, and made it a Colours; and we burnt the Clock in Holborn.

Mr. Att. Gen. And is this the Man?

Lunt. Yes.

Mr. Soll. Gen. Do you remember what Cloaths he had on?

Lunt. I don't remember the Colour.

Mr. Soll. Gen. What is the Livery his Master gives?

Lunt. A Blue.

Willis. Did I say I burnt it; or that the Company burnt it?

Lunt. He said; we burnt.

Mr. Att. Gen. That is he, and the rest of the Mob.

Mr. Darnell. You did not see him do any thing?

Lunt. Nothing at all.

Then Robert Cubwidge was sworn.

Mr. Soll. Gen. Do you know Mr. Grove?

Cubwidge. Yes.

Mr. Soll. Gen. Do you remember you went with him to see a Prisoner?

Cubwidge. Yes.

Mr. Soll. Gen. What Prisoner did you see there?

Cubwidge. The Prisoner at the Bar.

Mr. Soll. Gen. Did you see any other Prisoner but him?

Cubwidge. No: We saw Dammaree and Purchase below, but no other above.

Mr. Soll. Gen. What Cloaths had he on then?

Cubwidge. He had a blue Livery on.

Then William Orrel was sworn.

Mr. Att. Gen. Pray acquaint the Court and the Jury what you know of the Tumult, which was the First of March last, in those Parts where you was.

W. Orrel. I don't know any thing of the Prisoner at the Bar; but when I came to the End of Fetter-Lane, there was a Footman in a blue Livery, a clever shaped Man of his Size. I saw the Constable there, and said to him, Here is a great Riot, I am sorry you can't put a stop to it: Says he, Here is such a Mob, we can't suppress it: Says he, There is a Footman there, I know him very well; I know whose Man he is. I can't tell who he was, but I saw a Footman there huzzaing, and bidding them make haste. I went into the Meeting-House in Fetter-Lane; and saw the Timber pull'd down, and thrown into the Fire.

Mr. Att. Gen. You was at that Meeting-House in Fetter-Lane; Was you at any other?

W. Orrel. I was at Mr. Burges's and Mr. Earl's, and at that in Black-Friers: I went with the Guards thither.

\* Mr. Justice Foster, in his Reports, p. 242. says, "I think Faugban's is the Case cited in Willis's Trial by the Name of Ball."



Mr. *Att. Gen.* Give an Account of that.

*W. Orrel.* When I was in *Lincoln's-Inn-Fields*, the Cry was, To the City, to the Bank. When I came to the Guards, I said to the Captain, For God's Sake go into the City, for if they go to the Bank, we are undone; for there was a Report, that they were gone into the City. I asked several Persons as we went along, Where is the Mob? Are they gone into the City? At last I heard they were gone to the Meeting-House in *Black-Friers*, and were pulling it down. I went directly with the Guards up *Fleet-Lane*; I headed them in the *Old-Baily*, and run before, and got the Gates open, and told them, the Queen's Guards were coming: I shew'd them the way to the Meeting-House, and there they met the Mob pulling it down.

Mr. *Att. Gen.* Do you know of any other Meeting-House that was pull'd down? Was you at Mr. *Burgejs's*?

*W. Orrel.* I was in it four times: I saw it full of People: I saw the Galleries and Pulpit beaten in, and pulled down; and as I stood upon a Board, a Fellow was pulling it up, and swore, God damn that lazy Fellow, What does he do there?

Mr. *Att. Gen.* You say you was there four times.

*W. Orrel.* Yes, I was in Mr. *Burgejs's* four times, twice in Mr. *Earl's*, once in Mr. *Bradbury's*, and at the Door of *Black-Friers*.

*L. C. J.* What was the Cry there?

*W. Orrel.* Nothing but in general, Damn them, we will have them all down. I heard Mr. *Dolben's* House enquired for, but they mentioned my Lord *Wharton's*, and St. *James's*, often; I believe I heard it call'd out a thousand times: And when I was at Mr. *Earl's* in *Drury-Lane*, I call'd out, Where is *Jolly*, the Waterman? because I wanted to know where he was: Some said, He is gone to St. *James's*; others, to my Lord *Wharton's*; No, said others, he is gone to the Back-door, to break it open.

Mr. *Darnell.* You say you saw a Footman at the Fire; pray, What time of Night was it?

*W. Orrel.* About Ten, or a little after. As I went from *Fetter-Lane*, I went along with them, as they carried the Wood to *Holborn*, (but went at a distance on the other side the way) I saw the Footman at the End of the Alley, as you come out of the Meeting.

Mr. *Darnell.* Was that before the Fire was lighted, or after?

*W. Orrel.* It was after the Fire was lighted.

Mr. *Darnell.* What was the Footman doing?

*W. Orrel.* He was hollowing and huzzaing the Mob.

Mr. *Att. Gen.* My Lord, we have done with our Evidence for the Queen, and submit it to your Lordship.

Mr. *Darnell.* My Lord, I am Council for the Prisoner, who stands accused of High Treason, and the Instance is in levying War against the Queen. To make this out, the Gentlemen of the other Side begun with shewing, that there was an Intention to pull down Meeting-Houses in general; that was open'd: To make that out, the first Witness, *Tolboy*, says, That as he was going through the *Temple*, he heard a great Cry among the Mob, that they would go and pull down Mr. *Burgejs's* Meeting-House; it don't appear, that there was any more named. I must agree,

if the Design were to pull them down in general, and he acted in that Design, I can make no Question, but it would be High Treason; but if the Design was only to pull down Dr. *Burgejs's*, it was only a particular Injury to him; he might have his Remedy by an Action for it, and the Government might prosecute him for a Riot, but if that be the Case alone, that can't be High Treason: There must be a general Intent to pull down Houses, or Inclosures, and not to pull down any particular Man's House or Inclosure.

After he has given this Account, the other Witnesses give an Account, That at some of the Fires, there was a Discourse of going further, and pulling down all the Meeting-Houses about the Town, but the original Intent was only to pull down one. If, at that first Fire, they should take a new Resolution to pull down another, that would still be a particular Injury; and so if they should carry it never so far that way, it would not be High Treason, otherwise than as it is an Evidence of a general Intent: But if the Fact were particular, though they took that Resolution twenty times one after another, yet it would not amount to High Treason. But to bring it home to the Prisoner, to shew that he was concern'd in the Design, we submit it, that there is not such Evidence as is required to fix it upon him. The first Witness to that Point is *Grove*: He says there was a Man in a Livery, whether blue or green, he can't tell: Sometimes he said it was green, sometimes blue; but being ask'd, he is not sure the Prisoner is the Man, that he saw with a Banner, encouraging the Mob. If he can't be certain as to the Man, his Evidence can't be confirm'd by *Lunt*, who only speaks of the Prisoner's Confession; for they said they would not use that Confession, to fix the Overt-Act: And if it is not so, then *Grove's* Evidence is out of the Case. They would endeavour to support it by the Officer of *Newgate*, who carried *Grove* to the Prisoner; he says there was no other Man in the Room, and therefore it must be the Prisoner who was shewed to *Grove*; and then, says *Grove*, The Man I saw in *Newgate*, I believe to be the same I saw at the Fire; so that it is altogether uncertain, as to *Grove's* Evidence. Then they call *Viſtor*; he says he saw a Footman carry some of the Timber, and throw it into the Fire; and that he saw the same Man talk to *Lunt*, and *Lunt* is to support that Evidence, by saying, that the Prisoner came and talk'd to him, but *Lunt* don't pretend that he saw the Prisoner do any thing. It is scarce to be believed, that *Viſtor* should take Notice of his Features, so as to know him again, especially seeing his are not very remarkable, and there was no Light, but the Light of the Fire: And after all, he can't tell you any one Feature that is remarkable, nor did he take Notice of his Cloaths, or any thing remarkable about him. The Description of a Person is a constant Evidence that you meet with, in Case of a Robbery, or the like; you have the Description of the Colour of the Horse, or the Man's Cloaths, or some such thing; but he don't pretend to any one Circumstance to induce him to believe he is the same Man, but only that he is satisfied, for Reasons he keeps to himself. These are the only two Persons they have the least Colour to say are Witnesses to any Overt-Act, and without two he can't be convicted; and these are to be supported by *Lunt's* Evidence,

Evidence, that the Prisoner told him they had made him a Captain, and that he had made Colours of a Curtain, and that they had burnt the Clock. We think the Act is not sufficiently proved by two Witnesses, and therefore can't be supported by a Confession, which is but a dangerous Sort of Evidence in all Cases, and a Man is not to be found Guilty upon a Confession; and for that Reason, the Statute takes Care, that there shall be two Witnesses to an Overt-Act: We therefore submit it, that this Evidence is not sufficient to convict the Prisoner.

But, my Lord, the Prisoner's Case, we apprehend, is such, as will, in a great measure, excuse him from any Guilt; and we hope to satisfy your Lordship, and the Jury, that he was not concerned in this Design, or in aiding or assisting those that were Actors in it. The Prisoner is a Servant to one Madam Miles, who lives in *Grevill-Street*, near *Hatton-Garden*; he has lived there two Years, and has been, all that Time, a diligent Servant, and behaved himself well in the Family; and I believe, all the Assistance he has to enable him to make his Defence, is owing to their Charity, which we think is an Argument of his good Behaviour, that his Master and Mistress will interpose, and endeavour to bring him off in a Thing of this Kind. It was the First of *March* last, when this Insurrection was all over the Town, and they came to *Holborn*, and with the Materials of a Meeting-House, they made a great Fire near this Lady's House: I think, about half an Hour after Ten, was the first Notice that they had at this House, that there was a Fire: The Lady of the House was going to Bed, and in her Chamber they saw so great a Light, that they thought the Fire was near; they called to the Prisoner, and he was going to Bed too; they ordered him to go and learn where the Fire was, for they knew not what Sort of Fire it was: Upon that he went to learn what the Occasion of it was. There they served him, as upon this Occasion they did every body, they made them pay Obedience, as they call it, and hollow, and throw up their Hats. It is not to be supposed it was very readily learnt what the Design was, and where they had the Materials: As soon as he had inform'd himself, I think we shall shew, that he got out of the Crowd as fast as he could, and was going home to acquaint his Lady; that as he was going home, he was told, there was another Fire in *Hatton-Garden*; and he thinking he did not pursue his Lady's Instructions, without learning what this was, accordingly he struck over the Way, and went into *Hatton-Garden*, and there found it was the same Design, and the Materials of another Meeting-House were brought thither, and burning. As soon as he had thus inform'd himself, he came to his Lady, and inform'd her, that the Mob was up, that they were pulling down the Meeting-Houses, and that he had seen two Fires. After he had given this Account, they order'd the Doors to be shut up, and the Family went to Bed, and after that, he was not out of the House. Now, as to the Business of the Banner, there is not Evidence to fix it upon him: And if we shew, that he went alone from *Holborn*, it must be believed, that it was some other Footman, in some other Livery; for if he was their Captain, and carried the Colours upon a Pole, it was not his Business, nor would they have suffer'd him to leave them

there in *Holborn*, when they were going to make another Fire. It is pretty extraordinary to suppose where he could get a Pole to carry a Banner of that Kind: But if he was coming home by himself, without any Mob with him, sure it is pretty extraordinary, that the Captain of the Mob, so considerable a Man as he, could go in so private a Manner. We will call our Witnesses, and hope the Evidence will make it plain, that he did nothing but according to the Commands of his Mistress.

*Then Mrs. Brisco was sworn.*

Mr. Darnell. Pray, Madam, acquaint my Lord and the Jury, whether the Prisoner has lived at any time, and how long, with Mrs. Miles.

Mrs. Brisco. He has lived there two Years next May.

Mr. Darnell. In all that Time, how has he behaved himself?

Mrs. Brisco. A very civil, honest Fellow.

Mr. Darnell. Did you ever know him guilty of drinking, or staying out at Nights?

Mrs. Brisco. He has always carried himself very civilly.

Mr. Darnell. Pray, at the Time of this Disturbance, Do you know the Occasion of his going out?

Mrs. Brisco. I was in my Mother's Chamber while she was going to Bed, and I saw a Fire, and heard a great Noise; I call'd to my Sister, who was below, and bid her send Frank to know what the Matter was.

Mr. Darnell. Did he go accordingly?

Mrs. Brisco. Yes.

Mr. Darnell. You say you bid her send Frank. Who do you mean by that?

Mrs. Brisco. I mean the Prisoner at the Bar.

*Then Mrs. Miles was sworn.*

Mr. Darnell. Madam, you heard what Mrs. Brisco said, that she desired you to send Frank, the Prisoner, to see what the Matter was: Did you send him?

Mrs. Miles. My Sister call'd to me, and said, she believed there was a Fire in *Holborn*, and bid me send him to see; which I did.

Mr. Thomson. Pray what time was this?

Mrs. Miles. It was past Ten; the Clock had struck before my Mother went up.

Mr. Thomson. How much after Ten might it be?

Mrs. Miles. Indeed I can't tell; but I am sure it was past Ten.

Mr. Thomson. What time was it before he came back?

Mrs. Miles. I believe the Clock had not struck Twelve, to the best of my Memory.

Mr. Darnell. What Account did he give you when he came back?

Mrs. Miles. I did not see him that Night.

Mr. Darnell. What did he say next Day?

Mrs. Miles. He said they had burnt the Meetings: I ask'd him if he had done any thing? He said, nothing to harm him.

Mr. Darnell. Where is Mrs. Miles's House?

Mrs. Miles. In *Grevill-Street*; the Back of our House looks into *Furnival's-Inn*.

L. C. J. Had not you the Curiosity to know what Account he brought?

Mrs. Miles. I was not below; my Sister was.



*L. C. J.* How came you to ask him, Whether he had done any thing?

*Mrs. Miles.* Because next Day he had Notice given him, that *Lunt* intended to swear against him: At Supper I saw him look very dull; and having heard of this in the House, I ask'd him if he had done any thing to occasion it? He said, No, indeed.

*L. C. J.* How long was it before he was taken up?

*Mrs. Miles.* It was *Thursday Night*.

*L. C. J.* I would ask *Mrs. Brisco*, Pray what Account did he give you?

*Mrs. Brisco.* I can't be particular as to that; but only that they had burnt the Meeting-Houses, but he did not say that he had help'd to do it.

*L. C. J.* About what o'Clock was it when he came home?

*Mrs. Brisco.* To the best of my Knowledge the Clock had not struck Twelve.

*L. C. J.* Was not you impatient at his staying so long out?

*Mrs. Brisco.* It was not full two Hours.

*L. C. J.* Did you not ask him why he staid so long?

*Mrs. Brisco.* I was angry that he staid so long: I think he said, he never saw a Mob in *London* before; and to my Knowledge he was not in any of the Mobs before.

*L. C. J.* Did he give no Account what was done there?

*Mrs. Brisco.* I don't remember he did.

*L. C. J.* Did he give you any Account of the Curtain he carried?

*Mrs. Brisco.* I don't remember any thing, my Lord.

*L. C. J.* That is a pretty remarkable Thing.

*Mrs. Brisco.* I heard afterwards of a Curtain.

*L. C. J.* When did you hear of it?

*Mrs. Brisco.* When he was before the Justice.

*L. C. Baron.* Did you see any more Fires than one, when you sent him out?

*Mrs. Brisco.* No, my Lord.

*L. C. Baron.* Where did you expect the Fire to be?

*Mrs. Brisco.* I thought it was in *Holborn*.

*L. C. Baron.* Did you hear of any Fire in *Hatton-Garden*?

*Mrs. Brisco.* Yes, afterwards I did.

*L. C. Baron.* But you did not know of any there when you sent him out?

*Mrs. Brisco.* No, my Lord.

*Then Mary Hodges was sworn.*

*Mr. Darnell.* Do you know the Prisoner at the Bar?

*Hodges.* My Lord, he is my Fellow-Servant.

*Mr. Darnell.* What time of Night was it when your Mistress sent him out?

*Hodges.* It was past Ten.

*Mr. Darnell.* What was he sent for?

*Hodges.* It was to see if there was a Fire in *Holborn*.

*Mr. Darnell.* Then the Fire was burning before he went out?

*Hodges.* Yes, my Lord.

*Mr. Darnell.* How long had it been burning?

*Hodges.* I can't tell; my Mistress was going to Bed about Ten, and one of the young Ladies saw the Fire, and call'd out to him to go and see what it was.

*Mr. Darnell.* Was you there when he came back?

*Hodges.* I was not there; for I had a Relation that was ill, and my Mistress gave me Leave to go and sit up with her.

*Then Elizabeth Elliot was sworn.*

*Mr. Darnell.* Do you know the Prisoner at the Bar?

*Elliot.* Yes.

*Mr. Darnell.* Do you remember the Night the Fire was in *Holborn*?

*Elliot.* It was *St. David's Day*.

*Mr. Darnell.* Was he sent out that Night?

*Elliot.* He was sent to see the Fire at *Holborn*; my Lady sent him to see if there was a Fire.

*Mr. Darnell.* Did he go out for that?

*Elliot.* Yes.

*Mr. Darnell.* Was you there when he came back?

*Elliot.* Yes; I let him in.

*Mr. Darnell.* When he came back, what did he do? Did he go to Bed?

*Elliot.* Yes.

*Mr. Darnell.* What Account did he bring of the Fire?

*Elliot.* I don't know what Account he brought of it.

*Mr. Att. Gen.* Was you up when he came home?

*Elliot.* Yes.

*Mr. Att. Gen.* What o'Clock was it?

*Elliot.* The Clock had not struck Twelve.

*L. C. J.* You can't remember, it may be, the whole Account he gave when he came back; but do you remember nothing of it?

*Elliot.* No.

*L. C. J.* Not a Word?

*Elliot.* No.

*L. C. J.* Was he not ask'd how he came to stay so long?

*Elliot.* No, not in my Hearing.

*L. C. J.* Were your young Mistresses going to Bed, as well as the old one?

*Elliot.* No; they staid up 'till he came in.

*L. C. J.* But were they designing to go to Bed before he went out?

*Elliot.* Yes; we were going to Bed presently.

*L. C. J.* Well then. When you had staid up so long as Twelve, were there no Questions ask'd how he came to keep you up so long?

*Elliot.* The Ladies ask'd him, what made him stay? He said, he never saw a Mob before.

*L. C. J.* But I suppose he told you what Diversion he had had there.

*Elliot.* No; I did not hear him say any thing of it.

*L. C. J.* He told you nothing of the Fire, or the Colours?

*Elliot.* No; nothing.

*L. C. J.* Did not the Ladies ask what that Fire was?

*Elliot.* Not in my Hearing.

*Mr. Soll. Gen.* It is strange he should be sent out to enquire after the Fire, and not be ask'd any thing about it: Was no Enquiry made of the Errand he was sent about?

*Elliot.* Not in my Hearing.

*Mr. Thomson.* Had you no Discourse with him?

*Elliot.* No.

*Mr. Thomson.* Did you talk nothing of it the next Day?

*Elliot.* No.

*Mr. Soll.*

Mr. Soll. Gen. Did he give no Account the next Day, or at any time after, of what pass'd?

Elliot. No; not in my Hearing.

L. C. J. What Cloaths was he in that Night?

Elliot. He was in his Livery.

L. C. J. What is his Livery?

Elliot. It is blue, with black Buttons, and trimm'd with black.

Then Mr. Pryor was sworn.

Mr. Darnell. Pray acquaint my Lord and the Jury, whether you saw the Prisoner at the Bar, any time at the Fire in Holborn, and before that in Hatton-Garden.

Pryor. As I was coming down Holborn, I had been at Westminster; I came to Leather-Lane End, and there I light of the Prisoner at the Bar.

Mr. Darnell. Where was you going?

Pryor. I was going home to Clerkenwell: I saw Willis in Holborn: He cries out, Who comes there, Mr. Pryor?

Mr. Darnell. Where was Willis?

Pryor. He stood at the End of Leather-Lane, and he and I walk'd down together along Leather-Lane, to Grevill-Street: He told me he liv'd there with Mrs. Miles: I ask'd him, shall we drink a Mug of Beer? With all my Heart, says he; but my Lady has sent me out to see what the Matter is: So we walk'd talking together as far as Brooks-Market; and there were a great many People hollowing for High-Church and Sacheverel; so we parted there, and did not go in to drink, because there was a great Mob about.

Mr. Darnell. You say he parted from you to go home; Was any body with him?

Pryor. No.

Mr. Darnell. Was there any Curtain, or Colours, or Stick?

Pryor. No.

Mr. Darnell. Was there any body, or any Mob, that claim'd him as their Captain?

Pryor. No; I saw no body speak to him.

Mr. Darnell. Did you afterwards see the Fire in Hatton-Garden?

Pryor. They were just going to light it.

Mr. Darnell. What were they doing at the Meeting-House in Leather-Lane?

Pryor. They were pulling it down, and carrying it to Hatton-Garden.

Mr. Darnell. Did the Prisoner carry any of it?

Pryor. I did not see him carry any.

Mr. Att. Gen. What Time of Night was this?

Pryor. It was Eleven, or thereabouts; I can't tell whether it was over or under.

Mr. Soll. Gen. At which End of Leather-Lane did you see him?

Pryor. In Holborn.

Mr. Soll. Gen. Was not the Way you walk'd with him, as well the Way to Hatton-Garden, as to Grevill-Street?

Pryor. It was his Way as well to the one as the other.

Mr. Soll. Gen. Did you leave him standing in the Street, or how did you part?

Pryor. We shook Hands, and he said I must go and tell my Lady how it is.

Mr. Soll. Gen. What Time of Night was it?

Pryor. As nigh as I can guess, Eleven o'Clock.

Mr. Soll. Gen. Where did you part?

Pryor. Directly over-against Brooks-Market.

L. C. J. Where did you first see him?

Pryor. At Holborn, at Leather-Lane End.

L. C. J. Where was the Fire?

Pryor. Almost over-against the End of the Lane.

L. C. J. What was he doing?

Pryor. Nothing; only stood to look on.

L. C. J. Then you went with him up Leather-Lane?

Pryor. Yes.

L. C. J. Where did you part with him?

Pryor. At Brooks-Market; we walk'd so far, and talk'd of drinking together; but when the Mob were hollowing, and making such a Noise, we did not go in to drink.

L. C. J. Where did you talk of going in to drink?

Pryor. He did not name any Place, and I was a Stranger there.

L. C. J. How came you to walk so far as Brooks-Market?

Pryor. I don't know; we were talking of several things in the Country.

L. C. J. How came you to be out so late?

Pryor. I had been carrying some Glafs to Westminster, and was going home again.

L. C. Baron. Did he give you any Account of the Fire in Holborn?

Pryor. He talk'd nothing of the Fire.

L. C. Baron. How far was the Fire from the End of the Lane?

Pryor. Just at the End of it.

L. C. Baron. Did you see any thing of the Fire?

Pryor. I did see it.

L. C. Baron. Did he say he had been there?

Pryor. No; but he said his Lady sent him to see where it was.

Mr. Thomson. You said he was going home, and afterwards you say you went to Brooks-Market; is that between Fetter-Lane and Grevill-Street, or is it beyond it?

Pryor. It is beyond it.

Mr. Thomson. How came he then to go beyond Grevill-Street, in order to go home to his Mistress?

Pryor. We were talking of Country Affairs.

Mr. Darnell. We shall call a Witness to prove, that after Grove had been at Newgate to see the Prisoner, he declared he did not believe him to be the same Man.

Then Stephen Fletcher was sworn.

Mr. Darnell. Had you any Discourse with Grove after he had seen the Prisoner in Newgate?

Fletcher. When he came from Newgate on Good-Friday at Night, and had been to see the Prisoner, I ask'd him what he said to him? Nothing, says he; for he was not the Man that carried the Curtain; for the Man that carried the Curtain had a green Coat and brass Buttons.

Mr. Att. Gen. Are you an Acquaintance of Grove's?

Fletcher. Yes; I live in the same House.

Mr. Att. Gen. Was it Good-Friday at Night, after he had been at Newgate, that he told you this?

Fletcher. Yes.

Mr. Att. Gen. Did you ask him any Questions about the Prisoner; or did he tell you of himself?

Fletcher. He told me he had been at Newgate to see Mrs. Miles's Man: I ask'd if he said any thing?



thing? He said no; that is not the young Man that I saw with the Curtain.

Mr. Darnell. The Account I have of *Grove*, is, that he was a Tradesman, and broke, and now lives by Gaming.

L. C. J. If you have any thing to examine to his Reputation, you will do well to call your Witnesses to it. *Grove*, what do you say to this?

*Grove*. When I came from *Newgate*, I thought it was the Man; and I told him no such thing: I told every body I spoke with, that I believed it was the Man.

L. C. J. Did you tell him that you believed the Man that had the Curtain, was in a green Coat?

*Grove*. No, not that Night.

Mr. Darnell. Did you tell him so at any time?

*Grove*. Yes; but that was the *Wednesday* Night; but when I went to *Newgate*, he had a blue Coat; but I always believ'd him to be the same Man.

L. C. J. Did he tell you he had a green Coat on that Night he had been at *Newgate*, or before?

*Fletcher*. It was before.

L. C. J. I understood you, that when he came back from *Newgate*, he told you he had nothing to say to this Man, for that the Man that had the Curtain, had a green Coat and brass Buttons.

*Fletcher*. He said he could not be positive, for that Man had a green Coat and brass Buttons.

L. C. J. Did he tell you that Night that he had a green Coat and brass Buttons?

*Fletcher*. I can't tell whether it was that Night.

Mr. Darnell. You say once he told you he had a green Coat and brass Buttons: What did he say when he came from *Newgate*?

*Fletcher*. He said he could not be positive, for that he had a blue Coat on.

Mr. Justice Tracy. Did you, after you came from *Newgate*, say, you could not be positive he was the Man?

*Grove*. I did tell him I could not be positive.

Mr. Thomson. Did you tell him you believed him to be the Man?

*Grove*. Yes; I said I did believe it, but I would not swear it was he.

*Then Holgate was sworn.*

Mr. Darnell. We call him, to shew that at the Fire there was a Man in a green Livery, who was very active there: Pray tell us, Was you at the Fire in *Holborn*, and who did you observe there?

*Holgate*. My Lord, about half an Hour after Ten, I was at a Neighbour's House, I heard there was a Mob, and the Meeting-Houses were burning; upon that I went from thence to my Wife, and told her the Meeting-Houses were pulled down, and burning in *Holborn*; if you will go, I will see what they are doing. There I saw a great many Boys bringing Wood and Boards, and throwing them into the Fire: And at the Fire I saw a Footman in a green Livery and red Buttons, and red Stockings: I saw him jumping, and very jolly. I will not be positive that he is our Neighbour's Footman that is since gone off, but I did see a Footman in a green Livery at the Fire in *Holborn*, at *Leather-Lane* End.

Mr. Darnell. What did you see him do?

*Holgate*. I saw him jumping, and waving his Hat.

Mr. Darnell. What Sort of Man was he?

*Holgate*. Much such a Sort of Man as the Prisoner.

Mr. Darnell. Did you know the Footman that is gone off?

*Holgate*. Yes.

Mr. Darnell. Did you see the Prisoner at the Fire?

*Holgate*. No; I am sure I should have known him, if I had seen him.

Mr. Darnell. Did you stay any Time at the Fire in *Holborn*?

*Holgate*. I did not stay two Moments, but went up to *Hatton-Garden*, and there I saw a great many with their Clubs and Staves, crying out *Sacheverel*; one gave me a Stroke on the Head, and ask'd me, Why I did not pull off my Hat?

L. C. J. Why should you know the Prisoner at the Bar, if he had been there, and not know the Man in Green, who was your Acquaintance too?

*Holgate*. My Lord, I was at a Distance.

L. C. J. Would not the same Distance have hindered you from knowing the other?

Mr. Darnell. My Lord, I desire to call a Witness or two to the Manner of Life of this *Grove*.

*Then Thomas Clark was sworn.*

Mr. Darnell. Do you know Mr. *Grove*?

*Clark*. I have known him many Years.

Mr. Darnell. What was he?

*Clark*. He kept a Baker's Shop.

Mr. Darnell. What became of him?

*Clark*. He broke.

Mr. Darnell. What became of him afterwards?

*Clark*. He went somewhere down to the Water-Side, to some Place; but what it was I don't know.

Mr. Darnell. What does he do now?

*Clark*. I can't tell; but they say he works with his Uncle: I know nothing of him; but he never had a good Character in his Life.

Mr. Darnell. How does he employ himself?

*Clark*. He is given to playing, as I have heard say.

Mr. Darnell. Do you know any thing particularly?

*Clark*. No, indeed; I never took so much Notice of him: But for the Prisoner, I have known him two Years, and never saw any Hurt of him in my Life.

*Then Ward was sworn.*

Mr. Darnell. Do you know this *Grove*?

*Ward*. Yes.

Mr. Darnell. What do you know of him?

*Ward*. He was a Baker in *Hatton-Garden*; I knew him several Years: I know him to be a Gamester.

Mr. Darnell. What Instances can you give of his Gaming?

*Ward*. He has play'd with me for one.

Mr. Darnell. How often?

*Ward*. Not very often.

Mr. Darnell. What do you know of his Play? Does he live by it?

*Ward*. I can't tell whether he lives by it or no; but he has been by relation a great Gamester.

Mr. Darnell.

Mr. Darnell. Do you know of any body's Servant that suffer'd by him?

Ward. No.

Mr. Darnell. What Sort of Games did he play at?

Ward. At Dice.

Mr. Att. Gen. Do you reckon yourself a Gamester?

Ward. No.

Mr. Att. Gen. Did you ever know that Man play with any but yourself?

Ward. Yes; at the Bell Tavern in Gray's-Inn-Lane.

Mr. Att. Gen. How often did you know him play there?

Ward. But once.

Mr. Att. Gen. How long ago was that?

Ward. I can't tell how long; another time he play'd at our House in Hatton-Garden.

Mr. Att. Gen. How long ago was that?

Ward. I can't justly tell.

Mr. Darnell. Do you know the Prisoner?

Ward. Yes.

Mr. Darnell. How long have you known him?

Ward. Two Years.

Mr. Darnell. How has he behaved himself?

Ward. A very honest young Man as can come into a House, by all relations that I ever heard of him.

*Then Farrington was sworn.*

Mr. Darnell. Do you know the Prisoner?

Farrington. Yes.

Mr. Darnell. How long have you known him?

Farrington. I knew him when he lived in Chancery-Lane.

Mr. Darnell. What do you know of his Behaviour?

Farrington. A very civil young Man; he used to fetch Drink at my House: I never heard him swear, or knew him guilty of any Ill.

*Then Mr. Miles was sworn.*

Mr. Darnell. Pray, Sir, what Account do you give of the Prisoner?

Mr. Miles. He has lived in our Family two Years: He has always behaved himself well, and soberly, and was addicted to no Ill.

Mr. Soll. Gen. Was you at home that Night?

Mr. Miles. No; I was out of Town.

Mr. Soll. Gen. When did you return?

Mr. Miles. The Sunday following.

Mr. Darnell. My Lord, we will not trouble your Lordship with any more Witnesses; we hope we have well accounted for the Time he was out of his Mistress's House, for that seems to be all that sticks upon him, that his being out so long might give room for him to be concern'd in this Tumult: But by the Witnesses it appears, that the Curiosity of seeing a Mob, which he had never seen before, might take up some part of his Time; and the two Fires being so near, that he could not go from one, without seeing the other, engaged him to go to them both. There was a Friend too, that met him, with whom he walk'd up and down the Street an Hour; but we think it shews that he was not a Ringleader, or aiding, or assisting in pulling

down the Meeting-Houses, for that Witness says, they were then carrying the Materials, and the Fire was lighting at the Time when they were together; and that he parted with him, in order to go home, but his Curiosity carried him to see that Fire that was then lighting, that he might carry an Account of it.

But upon the main Question; we must humbly insist, that there is not Evidence to fix it upon the Prisoner. There are not two Witnesses to any Overt-Act of the same Treason, nor do those Witnesses ascertain it to be the Prisoner; for now it appears a little plainer, that his first Charge was against a Footman in a green Livery: He declared it was a Footman, in Green with Brass Buttons; and when he came to Newgate to see this Man, he believes him to be the same Man; that is the most of his Evidence; but when he came home then to his Companion, that he lived in the House with, he believed it was not the same Man, and he could not swear it was the same Man, because he had a blue Coat; and now he would carry his Belief so far as to believe, that he then had a blue Coat, with black Buttons; and surely, no body could mistake a blue Coat with black Buttons, for a green Coat with brass Buttons: Whatever may be supposed of the Colour of Blue by Fire-light, altering by that Light towards a Green, yet it can't turn Black Buttons into Brass ones.

Supposing the Person whom Grove pretends to accuse, were here, yet there are not two Witnesses to any Overt-Act, for it is only confirm'd by the Confession, which is proved by Lunt; but we hope the Prisoner is not the Person that had the Colours, and therefore there is no Evidence to make him guilty. We can't differ from the Resolution in the Books in Messenger's Case, much less with your Lordship's Resolution Yesterday; but the Case is entirely different between the Waterman and this Man, for there it did appear that he carried the Branch, and threw it into the Fire; that from thence, he hollow'd, and led a Party, and offer'd to be their Captain, to Drury-Lane, and in that manner he took upon him to lead them; and did lead them; but there is not any one Instance of that nature here; there is not any one Witness that proves him to be in a Meeting-House, or to have done any thing there, or to have gone from one to another. If he had join'd with them at the first Fire, and gone in with them in what they were doing; yet we must insist, that it would not make him Guilty of High Treason. In the Case in King Charles the Second's Time, it was apparent they were all in the Design; the Verdict found, that they assembled; that they arm'd themselves; that they chose a Captain; that when the Government thought fit to interpose to suppress them, they struck at the Officer; threw Stones at the Captain of the Guards; express'd their Resolutions of going to Whitehall; and shew'd what their Intent was; but no Design is proved against this Man, and nothing to make it agree with that Case: But those Persons that were by, all the Judges acquitted from that Treason. We think the Evidence was much stronger against them, than what is offered against this Man: For in the Case of Beadle, he was proved to be among them; and when the Officer pursued him, he turn'd about, and cry'd to the People to face about, and not to leave him: And though it



appear'd he was in the Design, and called to the rest, to resist in his Defence, yet he was agreed not to be guilty of High Treason, because he was not aiding in pulling down the Houses; which in those Matters wherein the Judges gave their Opinion, made it High Treason: But as to *Green*, in the first special Verdict, and *Beadle*, they agreed, the Verdict was not full enough to convict them.

*L. C. J.* The Jury found the Evidence, but did not find the Fact, which might have arose from that Evidence; but if they had found, as the Consequence of that Evidence, that they were aiding and assisting, they would have been Guilty. And though the Court thought there was Reason for the Jury to have said so, yet they not having said it, the Court could not say it for them.

*Mr. Darnell.* My Lord, we say there is no Intention proved against him, nor assisting in doing that which is the Crime, in pulling down the second Meeting-House: And as for the first, that was pull'd down, and burning, before he came; so that he could not assist in that.

*Willis.* I desire *Lunt* may be asked, If he saw me carry any thing to the Fire?

*Lunt.* I did not see him carry any thing.

*Willis.* Did he see any of the Mob take Notice of me?

*Lunt.* There was no body with him, or that took Notice of him: He went from the Fire, after he had spoke those Words, very quietly.

*L. C. J. Visor.* Was you by *Mr. Lunt*, when you saw the Prisoner carry the Timber?

*Visor.* He was within the Shop, I believe.

*L. C. J.* You told us, that you saw several People in the Meeting, breaking it down: Did you see the Prisoner there?

*Visor.* No, I did not.

*L. C. J.* Pray, whence did he bring that Timber, that you saw upon his Shoulders?

*Visor.* I can't tell that.

*L. C. J.* You did not see him bring it out of the Meeting-House, did you?

*Visor.* No, I did not.

*Mr. Soll. Gen.* *Mr. Lunt*, Was *Visor* by you, when the Prisoner spoke to you?

*Lunt.* He stood lower than me: We fill'd up the Door-way: My Hand was on the Side of the Door: Every now and then, the Mob would strike at me, as they went by, and were carrying the Wood from the Meeting to the Fire; they would Huzza, and cry, You Dog, who are you for? *Mr. Visor* and I stood so about half an Hour: I stood there before the Fire was lighted, and 'till the Guards came.

*Mr. Soll. Gen.* How often did you see the Prisoner during that time?

*Lunt.* But once; and that was when he spoke those Words to me.

*Mr. Soll. Gen.* Was *Visor* by you then?

*Lunt.* Yes; of the Side of me.

*Mr. Soll. Gen.* Then set up *Visor* again. Pray Sir, about this Timber: You say you saw him with some Timber on his Back; Who was by at that Time? Was *Lunt* by?

*Visor.* I don't know whether he was at the Door, or in the Shop.

*Mr. Thomson.* Was he coming that Way from the Meeting with the Timber?

*Visor.* Yes.

*Mr. Darnell.* Can you take it on your Oath, that the Man that spoke to *Mr. Lunt*, was the Man that carried the Timber?

*Visor.* No, I can't.

*Mr. Att. Gen.* My Lord, we think the Proof is sufficient; and notwithstanding any thing that has been said by the Council for the Defendant, it stands unimpeach'd, and it is clear, that the Prisoner is Guilty of this Treason. The Evidence of both Sides makes it appear, that upon this Day there was an Insurrection of the People, in order to pull down the Meeting-Houses, and that they executed their Design by pulling down several at that Time. *Mr. Darnell* don't deny, but that, in point of Law, all those People that were gathered together, to execute this Design, are equally Guilty of High Treason: So that the Question is only, Whether this Prisoner was one of those People that were gathered together? That which he insists upon, is, that though this Man was there, yet no Proof is made, that he was aiding towards the carrying on this Design; therefore we think what our Witnesses say is consistent, and not impeach'd by what was said of the other Side. The first Witness that we called, though he was not acquainted with the Prisoner, yet he says, there was a Man in a blue Livery, that was so remarkable in leading the Mob, with a Curtain on a Pole, that he could not but take Notice of it; and that when he went to *Newgate*, to see the Prisoner, he took him to be the same Man that carried the Colours; and though he can't be so positive as to swear directly, yet he now believes it is the same Man, though he can't be positive. I am sure I should be very far from pressing any thing further than the Nature of the Evidence will bear; therefore I hope I don't misrepeat what he says: Therefore it leaves it somewhat uncertain yet, whether the Prisoner at the Bar was the Man that carried those Colours. But that which puts this out of Dispute, and makes it clear that this is the Man, is *Lunt's* Evidence, who now appears not to be an Enemy to the Prisoner: He tells you, that that Night the Prisoner told him, that they had made him Captain of a Party that Night; that he had made Colours of a Curtain; and that we had burnt the Clock. Now it is very strange, that if he was not concern'd in carrying this Curtain, that he should talk of a Curtain and Colours, and say, that he had made Colours of a Curtain. If he was not the Man, it is unhappy that he should, within an Hour after he was observed by our Witnesses, say, that he was the Man they had chosen; and that he had made a Colours of a Curtain; and that they had burnt the Clock. It is not to be imagined he would have said such a thing, if he had not been the Man that the others saw carrying it; therefore, putting these two Witnesses together, (who are Persons that no ways appear to be concerned to bring this Man to Justice more than any other) and it makes it plain and clear, that this is the Man that flourished the Colours. If so, then it is plain this is one Evidence; and I agree, it is necessary that there should be another Witness to prove some Fact, and the Testimony of one Witness will not be enough, therefore we have produced *Visor*, that personally knew this Man. He says, he saw him with a Piece of Timber on his Shoulders; that he saw him throw it into the Fire; and that

he saw that Man go afterwards, and speak to *Lunt*, and *Lunt* told him who he was.

It is of Consequence to all Governments, to make every Body, that is any ways aiding in these Disorders, equally Guilty; for it is impossible to tell who begins in these Cafes: You may know who carries on these Things, but you can't tell who begins them; therefore it will not be sufficient for them to rely on, that he was sent by his Mistress at that time, for that is all that was proved, that he was sent out to see where the Fire was, and his being sent out for that Purpose will not make him the less Guilty, if he did join with them, and aid them in what was done: For if Men are met together to do an unlawful Act, and those that don't know it join with them, they are Guilty; therefore whether he knew of that Meeting, or was only sent out by his Mistress, yet if it is proved, that he did join, and aid and assist those that were engaged in that Treason, he is equally Guilty. As to what was said by *Prior*, who was his Companion, that appears to be just at his being sent out by his Mistress to enquire: He told this Man, that he was sent out to get Intelligence, but you see, that though he was ask'd to stay and drink with this Man, he would not, but left him, and what he did then, he could not tell; it is therefore likely that he afterwards went to this Business, that he was afterwards unhappily engaged in.

As to what they insist on, that they have call'd Witnesses to invalidate the Testimony of *Grove*, that he made some Mistake about the Colour of his Cloaths, that is no great matter to be rely'd on; for blue and green, by Candle-light, are pretty much of the same Cast, especially at a transient View, but you see the View he had was sufficient to know his Face, but the Light of the Fire occasion'd another Cast upon his Cloaths, therefore his thinking it to be green when it was blue, will make no Difference: And though he don't speak positively, but speaks with Caution, and not as a Man would do, that was prejudiced, and came to take away a Man's Life: Though he says he can't positively say this is the Man, yet he says he does really think it is. As to the Witnesses that prove he had a Misfortune, and broke, that may be many an honest Man's Misfortune, to fail in a way of Trade: I don't see that they do impeach his Credit at all: Though they talk of his playing, I don't find but one Man that has seen him play, and most People do some time or other: I don't find that he has swerved, or done any thing foul, but we must submit the Matter of Fact to the Consideration of the Jury: I believe the Matter of Law is agreed: I believe there was a Notion in the World, that it was only a Riot, for which they might be fined, and the like, but the Law is now agreed; and as to the Fact, we must submit it to your Lordship's Directions.

*Mr. Soll. Gen.* I think *Mr. Darnell* does agree, that if there was a general Intention to pull down Meeting-Houses, it would be Rebellion and High Treason. I take it, that it was so, is as fully proved as is possible, by having so many pull'd down, and by such a Multitude of People as were got together for that Purpose: For it can't be thought, that the People that were at one House, intended to pull down that, and those that were at the other Houses intended to pull down them only; but it must be a general Inten-

tion to pull down Meeting-Houses in general; we think, therefore, the general Intention is proved, therefore what *Tolboy* says don't confine it: For though he says, what they declared was only in regard to *Mr. Burgess's* Meeting-House, yet that don't take off from the Evidence of what pass'd the next Day, when the several Meeting-Houses were pull'd down; and the Fact, without that Evidence, shows the particular Intention; and the Mob that were at *Lincoln's-Inn-Fields*, swore, Damn them, they would have them all down, and accordingly they went away to another, and pull'd that down; therefore, that there was a general Intention, is sufficiently proved, and that this Man did act in that Intention. We think it is sufficiently proved, that he was at Two of them; but if it had been but one, it had been the same Case. But they object, that this is not a legal Evidence; for say they, the Statute restrains it, and says, that no Confession can be given in Evidence, and the Evidence of *Lunt*, without it, will not do; and *Grove's* not swearing positively to the Man, without the help of *Lunt*, will not be a legal Evidence, so as to prove an Overt-Act. This is the Strength of the Objection in point of Law, and God forbid that we should insist on any thing but what is legal Evidence: It is Justice to him, not to offer any such thing, as it is to the Crown, to insist on what is legal Evidence, to bring him to Punishment. The Words of the Act are, That no Person shall be indicted, try'd, or attainted of High Treason, whereby Corruption of Blood may be made, or of Misprision of such Treason, but by the Oaths and Testimonies of two lawful Witnesses, either both to the same Overt-Act, or one to one, and the other to another Overt-Act of the same Treason, unless the Party willingly, in open Court, confess the same, &c. Now in this Case, here are two lawful Witnesses. *Grove* is a lawful Witness, he is capable of being a Witness; whether what he says is sufficient for the Proof of the Point, must be left to the Consideration of the Jury. If there are two legal Witnesses, to which there are no legal Objections, it is sufficient; whether what they swear is sufficient to prove the Fact, is of another Consideration, but there is not one Word in the Act, to restrain a Confession from being given in Evidence: He shall not be convicted on a Trial, without two lawful Witnesses, that is the Thing that is provided for, and it was to exclude a Precedent that had been settled in *Tong's* Case, in my Lord Chief Justice *Keyling's* Reports, an Evidence of Confession only, that was proved by two Witnesses, and that was the Occasion of making this Law, that his Confession alone should not be sufficient, without an Overt-Act. This was the Reason and Ground of making that Act of Parliament, but it was not design'd to exclude all Confessions. That was Evidence at Law, and always must be so: That Evidence that comes out of a Man's own Mouth, was always allow'd. The Design of the Act was to exclude Confessions from having the Force of a Conviction, unless it were in a Court of Record, and to prevent a Confession proved by two Witnesses, from being a sufficient Ground for a Conviction. A Confession is a considerable Evidence, and in many Cafes clears a Thing beyond Contradiction; and in this Case it shews how necessary it is; for when Things are transacted in the Dark, and it



it is impossible for Strangers to give a clear Description of Persons, surely the Confession of a Man himself is the most proper Evidence in the World, and the most satisfactory. This then being a lawful Evidence, it stands clear of that Objection: Here are two Witnesses to the Overt-Act, and this Evidence of *Lunt* is not excluded, but this Confession of the Party is lawful to be given in Evidence.

This being the State of the Matter, How stands it then? It is agreed he was at the Bonfire in *Holborn*; he was sent out for that Purpose: The Fire was seen at his Mistress's House, and he was sent out to enquire after the Matter. That there was a Man there, in a blue Livery, is proved by several People, and it is proved that he had a blue Livery. *Grove* says he saw a Man, he can't tell whether he was in blue or green, with a Standard, in *Holborn*: He says, he don't know whether he was in blue or green, but he took him to be a Man of that Size, and he supposes him to be the Man. But here is still a Doubt, whether this is the Man that carried the Standard, and how is that clear'd? Now this, with Submission, is clear'd by the Man himself, if that be Evidence, which we insist upon it, it is. This Declaration to *Lunt*, that he had made Colours of a Curtain, and that he was chose Captain of a Party, That does explain it, and is not answer'd by any thing they have offer'd to the contrary. As to his acting in the Tumult in *Leather-Lane*, *Viſtor* swears that he saw him with a Piece of Timber on his Shoulder, and that he carried it, and threw it into the Fire. *Lunt*, as to every thing he speaks, is clear: He proves that he spoke some Words to him; and as to what *Viſtor* says, he is as clear, that he had the Wood, and threw it in. The only Question then will be, Where he had this Wood? Whether he had the Wood which he threw into the Fire, made of the Materials of the Meeting-House, from any other Place? They give you some Evidence, that he was going home quietly; and that they parted about Eleven at *Brook's Market*: But it is plain, he did not go home 'till just Twelve, for so all the Family agree; so that that Time is to be accounted for which he might have spent at this Bonfire, and in this Tumult. There is another Man to answer the Business of what they call the High Church Standard: He says there was a Man in a green Livery which he saw, and thought he knew him, but could not be positive, because he was at a Distance; but if it had been this Man, he believes he should have known him; but there is as little Reason for him to know the one as the other. The Man in the green Livery, he says, is run away, but he says nothing as to the Brass Buttons; and it is easy to mistake between green and blue.

I shall not urge the Evidence further than it is reasonable; these are Circumstances which will be under the Consideration of the Jury. But supposing the Man to be concern'd in this manner, acting as the Queen's Evidence have prov'd, it will be High Treason within the Case in my Lord *Keyling's* Reports, and is not distinguish'd by what Mr. *Darnell* offer'd. He says, there was leading and arming, and they struck at the Guards; so here was leading, for no body denies but they had a Standard: The only Question is, Whether the Prisoner carried

it? And in the other Mob in *Lincoln's-Inn-Fields*, they were led, and hollowed away to *Drury-Lane*. And as to the Case of *Beadle*, which he would compare it to, there was no Act that was done by him; besides the Verdict was defective, in not finding the aiding and assisting; for tho' they found the Facts, yet they did not draw the Conclusion from those Facts. As to what has been said to the Reputation of *Grove*, I don't find it any ways affects him; it is not proved that he has cheated, or that he is a common Gamester, or that he lives by that way. As to the Reputation of the Prisoner, there may be many honest Men that might think they did Service at this time, and he might be desired among the rest; but that is no Argument why he should not be concerned in the Fact: Whether he was, or not, is what we must submit to the Consideration of the Jury.

Mr. *Thomson*. My Lord, as to the Matter of Law, it has been fully spoken to, and that the Intention was general, is prov'd; the only Question is, Whether the Prisoner was aiding, and so prov'd in a legal Manner. I will only state how each Overt-Act is prov'd: The first Act is his going with a Piece of Wood on his Shoulder, and throwing it into the Fire; That *Viſtor* swears positively. I ask'd, whether he was coming with it as from the Meeting-House, and he said he was: As to that, it is plainly sworn upon him as to the Man.

The other Overt-Act is from *Grove*; there is indeed some Uncertainty as to the Person, *Grove* was not indeed very positive; he did observe a Man at the Fire, he could not say whether he had on a blue Livery, or green, but when he went to *Newgate* to see the Prisoner, he did say he believed him to be the Man. Indeed they pretend that he said something contrary to his Companion, but all he said then, was, that he could not be positive, but he did say, he believed him to be the Man. Now there being this Uncertainty, what do we call *Lunt* to his Confession of? If we called him to prove the Overt-Act by his Confession only, there might be some Colour to object to it: But the Fact is proved to be done by *Grove*, and we call *Lunt* only as to the Identity of the Person. He only explains what *Grove* had sworn before: He swore the Colours were display'd, and the Confession is only as to the Identity of the Person. As to the Reputation of *Grove*, they did endeavour to asperse him, but I think they could not make any thing out: They don't pretend to prove any Malice in him; nay, he is the rather to be credited, because he will not be positive. If he had had any Malice, he would have sworn positively, but you see he will not be positive.

Something was mentioned that there was a Man in a green Livery there, from whence they would infer that he was the Man that was thus instrumental, and that it was not the Man in the blue Livery; but that can't be he, because he had red Buttons and red Stockings, so that that seems not to have much in it. They pretend to account for him as if he was not there, when *Prior* says he met him at Eleven, but he did not go home 'till Twelve: So that we think having thus prov'd by *Viſtor* positively, by *Grove* thus circumstantiated in this manner; the Man's Confession coming afterwards by *Lunt*, which declares

clares him to be the Man that did the Fact, we think it brings it home to the Prisoner. But we submit it to your Lordship and the Jury.

Mr. Darnell. My Lord, as to the Matter of the Confession, I think what Mr. *Solicitor General* says by way of Answer, will lay aside the Statute of King *William*, for it is, in effect, to say, that if the two Witnesses to an Overt-Act are uncertain as to the Person, his Confession must fix it upon him. If two Witnesses will swear that a Man in a blue Coat did commit High Treason, but are uncertain as to the Man, it shall be brought home to any Man in a blue Coat, if he shall come and say that he did the Fact; so that the Confession is entirely the Evidence, for the other Evidence could not convict him without it.

L. C. J. Do you apprehend that *Grove's* Evidence is not to be considered by the Jury? Is it only, that some Man or other did display the Colours? Does not his Evidence go further? He says he went to see the Man in *Newgate*, and he believes, that Man that he saw there was the same: Now how far that will weigh with the Jury, is of another Consideration: And as to the Case of *Beadle*, the Fact was found there, but the Jury not finding that he was aiding and assisting, the Court could not supply it for them.

L. C. Baron. You have laid a Stress upon that which is found in the special Verdict. See what the Judgment of the Judges was. But as to *Green*, in the first special Verdict, and *Beadle* in the third special Verdict, we all agreed, that the Verdict was not full enough, as to them, for us to judge it Treason in them, because the Verdict only finds that they were present, and finds no particular Act of Force committed by them; and doth not find that they were aiding and assisting to the rest: And it is possible one may be present amongst such a Rabble, only out of Curiosity to see, and whether they were aiding and assisting is Matter of Fact, which ought to be expressly found by the Jury, and not be left to us, upon any colourable Implication; and accordingly those two were discharged.

L. C. J. Gentlemen of the Jury, *Francis Willis*, the Prisoner at the Bar, stands indicted before you, for that he, upon the First Day of *March* last, with a great Number of others, did levy publick War against her Majesty. The Proof that has been offered by Mr. Attorney, and the Council for the Queen, has tended to shew, that there was a general Design of pulling down all the Meeting-Houses; and that this Prisoner did assist in it, did carry Colours in it, and did other Acts that gave Assistance in it: This is what they proposed to make out against him.

The Evidence was first *Tolboy*, who says, that the Day before, he was going through the *Temple*, and there was a great Mob that attended Dr. *Sacheverel* from his Trial, and among them he heard a Discourse of pulling down Mr. *Burgess's* Meeting-House; he heard no other mention'd; some were for pulling it down then; others were for leaving it 'till the next Night; and others, 'till the Event of Dr. *Sacheverel's* Trial. What Determination they came to, he don't know, for he went away; so that his Evidence goes no further than proving a Design to pull down one Meeting-House.

The next Witness is *Grove*; he gives an Account of two Meeting-Houses pull'd down, and

Fires made from the Materials, one in *Holborn*, the other in *Hatton-Garden*; That at that Fire in *Holborn*, he saw a Man with a Curtain on a Pole, and he called it High-Church Standard, and was active among the People; stopt Coaches, and got Money from those that were in them, and made them cry out as he did. As for the Person, he can't say the Prisoner is he. He says he took notice of him, he was in a Livery; and that he went to *Newgate*, and saw one, who, he can't be positive, but he believes to be the same that he saw carrying the Curtain; but whether it is the Prisoner at the Bar, that he can't say: For he says he has not the same Cloaths, nor Wig on, and that makes him doubtful. Being asked, What Colour his Coat was, he is not sure whether it was blue or green; but he said, he rather believed it was blue.

This not being enough to bring it home to the Prisoner, they called another Witness, who was *Hill*, who shewed him the Prisoner: And they brought *Cubwidge*, who went with him; and they tell you, that the Man they shewed to him in *Newgate*, was the Prisoner at the Bar; and these being laid together, it amounts to the same Thing as if he had sworn against the Prisoner, as he did against the Man in *Newgate*, that is, that he believed him to be the same Person that carried the Colours.

The next is *Viſtor*; he says, that after the Fire at *Holborn*, they came to *Leather-Lane*; that they got into the Meeting-House there, and work'd hard to pull it down, but he don't say the Prisoner was in the Meeting-House: But the Fire they made was in *Hatton-Garden*, and there he saw the Prisoner carrying a Piece of Wood, and throwing it into the Fire, and making an Huzza. He don't say where he had that Wood; he don't say that he saw him bring it out of the Meeting-House, and he did not know him at that Time, but he kept his Eye upon him; and not long after, he came by Mr. *Lunt's* Door, and the Prisoner spoke to *Lunt*: What he said, he can't tell, but he ask'd *Lunt* if he knew him; *Lunt* told him he did; and when he was come so near, he does take upon him to say, that he remembers his Face, and he takes him to be the same Person. He was ask'd as to his Features, but he don't go about to distinguish them; and it is difficult for a Man to describe those Particulars, by which a Man distinguishes one from another.

Then *Lunt* is call'd, and he confirms, that the Prisoner was at the Fire at the same time that *Viſtor* was at his Door; that it was Eleven at Night; and that the Prisoner spoke to him; that his Boy ask'd him, What, *Frank*, are you one of them? And thereupon he said, They have made me a Captain of a Party; I took a Window-Curtain, and made it Colours; and we burnt the Clock. This they would apply to clear that which *Grove* speaks a little more doubtfully, when he says only, that he believes him to be the same Person as he saw in *Newgate*.

The next Witness is *Orrel*, and he can't charge any thing upon the Prisoner, but gives an Account of the pulling down the several Meeting-Houses, and the several Mobs that were in *Lincoln's-Inn-Fields*, *Drury-Lane*, *Holborn*, and *Black-Friers*, and their making general Declarations, that they would have them all down. And thus far his Evidence is material, that there



was a Design to pull them all down; it was publicly declared, and put in Execution, as far as they had Time. Actions declare the Intentions; for when it breaks out into Action, then the Design appears. He said something further, which is, that he saw a Footman in a blue Livery, that was busy at the Fire, and encouraging the People to throw the Wood in. He says he was a well-made Man, much of the Size of the Prisoner. This is the Evidence produced against the Prisoner, and upon that you will take notice it is made out, that there was a general Design put in Execution, of pulling down the Meeting-Houses; and that he was at one Fire in *Hatton-Garden*; and there is only the Belief of the Witness so strengthen'd as to his being at the other.

On the other Hand, the Prisoner, in his Defence, tells you, that he is Servant to a Gentlewoman in *Grevil-Street*; that the Family being going to Bed about Ten o'Clock, and seeing a Light in the Street, ordered him to see what was the matter: This was after the Clock had struck Ten. He went into *Holborn*, and saw the Fire; but, as he pretends, did not come near it; and then he came back to his Mistress's House; and so they insist, that they have given an Account of the whole Time he was out. The first Witness they produced was Mrs. *Brisco*, who was the Daughter of his Mistress; she tells you the Occasion of sending him out; that she observed a Light, and directed him to go; and tells you the Time, that he came back before the Clock had struck Twelve; and that she did express her Anger for his staying so long. Mrs. *Miles* confirms the same; and being ask'd what Account he gave when he came back, both they and the Maids say, he gave no Account of the Fire; but she hearing that *Lunt* had something to say against him, and taking notice that he was dejected, ask'd him, If he had done any thing? And he said, Nothing to harm him. *Hodges* speaks of his going out, but not of his returning. *Elliot* says, she let him in, but did not hear him say any thing at all about the Fire; but she says he was in a blue Livery. Then they call *Prior*, and he tells you, he was coming from *Westminster* to *Clerkenwell*; he saw the Fire in *Holborn*, and at the End of *Leather-Lane* he saw the Prisoner looking on, but doing nothing, none of the Mob with him; that the Prisoner and he walked along *Leather-Lane*, and it was propos'd, that they should drink together, but they walking together, observed a Fire making in *Hatton-Garden*; that they walk'd by the Street where his Mistress lived, as far as *Brooks-Market*, and there they parted, and the Prisoner turn'd towards his Mistress's House, and, as he thought, went home. Then they produce *Fletcher*, and he speaks as to *Grove's* Evidence: And to take off from that Credit that otherwise his Testimony would have, he says, that *Good-Friday*, at Night, he told him, the Prisoner was not the Man, for the Person he saw had a green Livery, and brass Buttons; so he said at first: but upon Enquiry a little more particularly, he did not tell him at that Time that it was a green Livery, but some Time before: And *Grove* being call'd again, does own the same; and that he said he could not be positive, and that is what he now says, and only says, he believes him to be the same, and that he told the Witness so at that Time. *Holgate* says, that about half an Hour after Ten he heard of the

Mob; and went to see it; that he went to the Fire in *Holborn*, and there he saw a Footman in Green, but he had red Buttons, and the Prisoner's Livery was blue, trimm'd with black, and black Buttons: But he says he saw a Footman there in Green, which is offer'd, to let you see that there might be another Person that *Grove* did really see. Then *Clark* is brought to give some Account of *Grove*; he says he kept a Shop, and broke, and never had a very good Character. *Ward* says the same; and that he was a Gamester; and that it was reported he used to get his Living that way: And he tells you, the Prisoner is of a good Reputation; and those of the Family say as much of him.

This is the Substance of the Evidence on both Sides. The Use that the Council for the Prisoner would make of their Evidence, is first, to shew that they have given an Account of his Time; that he was otherwise employed than in the Manner the Witnesses for the Queen have given an Account of. Now it is certain, they have not; for they give an Account only of a Walk from *Holborn* to *Brooks-Market*, whereas his own Witnesses say he was out at least an Hour and an half, so that there was Time enough for him to be there: And though that Witness saw him going homeward, and not to the Fire, yet it is certain, he did not go home then, and that he was at the Fire, because two Witnesses swear he was at the Fire; and it does appear that he was at both the Fires. Before I state that, give me Leave to say, that as there is a full Proof of a general Design put in Execution, of pulling down the Meeting-Houses, so any one that is aiding in that, is Guilty of High Treason, though he were not privy to the first Design; for in High Treason there is no such thing as Accessary; all that are Actors are equally guilty, and that was the Case of the Lord *Essex*: He went with some Forces to remove some evil Counsellors, and came to the City to desire Assistance; some Forces he had assembled in his own House; others join'd him in the City; it was adjudged they were all Guilty of High Treason, though they did not know of his Design; and those that were accidentally there, and did depart, it was said, were entitled to Her Majesty's Grace; but it is not said they were Not Guilty. So was the Case of the Bawdy-Houses; yet it is not said, that any of them were the Persons that formed the Design of pulling them down.

You are therefore to consider, that it is not enough to charge the Prisoner, that he was at the two Fires: It is not enough that there was Time for him to do what he is charged with, but you are to consider what is proved on him that he did. You observe what is objected as to *Grove*, that there is a great Uncertainty as to his Evidence, and that his Credit is not fair: He don't charge the Prisoner positively, nor ever did. He differed as to the Colour of his Cloaths: And though it is rightly observed, that Blue and Green are not easily distinguished by the Light of the Fire, yet that is not the Objection; the Objection is, that the Witness, at first, declared he believed it to be Green, and now he has told you, that he believes it to be Blue, and that is not consistent, and does therefore a little concern his Credit in this Matter, that he has changed his Evidence. Then they say, that he did not see him at the Meeting-House: He saw somebody carry-

carrying Colours, and believes this to be the Man; but he says, he was not near enough to distinguish his Cloaths, so he might not be able to distinguish his Face. But then they bring some Witnesses to shew he is not a Man of so clear a Credit, but they don't charge any great Matter upon him. As for his having broke; that may be a Misfortune that may attend any Man: But then they would support this by the Confession he made to *Lunt*, who swears, that he said he made Colours of a Curtain. Now that may seem to give some Colour to it; but I ought to take notice of the other Part of his Confession, that they had made him Captain of a Party, which don't appear to be likely; for as he was moving from one Party to another, it would be very natural for the Captain to have his Mob with him, but it is plain he was unattended in going from one Fire to another. When he was at that Fire in *Hatton-Garden*, he went away alone, as *Lunt* says: And they don't say that he did encourage the Mob. He did throw down a Piece of Wood, and huzza, but he did not much encourage others. As to the Piece of Wood, one of the Witnesses did not see it, and the other that did see it, did not see him in the Meeting-House; so that it is not proved he was at either of the Meeting-Houses, though he was at the Fires. And you may consider another Circumstance, and that is, that this Witness, *Vistor*, did not know him before, nor did he know what Cloaths he had on; and if he had not come nearer to him, to *Lunt's* Door, in Probability, he had not known him again; but he says he saw him throw a Piece of Wood into the Fire; and he says he kept his Eye upon that Man, and saw him come up, and speak to *Lunt*. Now you will consider, whether such a Man might not, in a Crowd, slip out of his Eye, and he might take another for him; for *Lunt*, that knew him, says, he did not see him have any Timber at all.

These are the Observations that, I apprehend, may be most proper for me to make to you. As for the Law, if you take it, that he is the Man that had the Colours in *Holborn*, and afterwards came to the other Fire, and threw the Piece of Timber in there, he is undoubtedly Guilty of High Treason: Therefore you must consider first, how far you believe he is the same that carried the Colours in *Holborn*, and how far you take him to be concern'd in pulling down the Meeting-House in *Leather-Lane*. I should take notice of another Thing, that there was a Footman in Green, at the Fire in *Holborn*, who was very active; and that Man could not mistake the Colour of Blue and Green, because he knew the Prisoner: Now that being so, it does appear there was a Footman in Blue, and another in Green, that was active at the Fire in *Holborn*, and one of these two, perhaps, had the Colours; the Question is which. *Grove* first says, the Man that had the Colours was in Green, and then he says he was in Blue. Now if the first be right, that he was in Green, it does appear there was such an one in Green: If you believe he was the Person that did make use of these Colours, and that he was assisting in pulling down the Meeting-House in *Hatton-Garden*, then you are to find him Guilty: If you think he was not the Person, you will acquit him.

Then the Jury withdrew, and the Court adjourn'd 'till Five o'Clock, when the Jury brought in their Verdict.

*Cler. of Arr. Francis Willis*, hold up thy Hand. Look upon the Prisoner: How say you? Is he Guilty of the High Treason whereof he stands indicted, or Not Guilty?

*Foreman*. Not Guilty.

*Cler. of Arr.* Did he fly for it?

*Foreman*. Not that we know of.

## LVIII. The Trial of George Purchase, for High Treason, in levying War against Her Majesty, in the Kingdom, under Pretence of pulling down Meeting-Houses. 9 Annæ, 1710.

[ At the Sessions-House in the Old-Baily. ]

*Domina Regina versus Purchase.*

*Die Sabbati Vicesimo Primo die Aprilis Anno Domini & Regine prædictæ.*

THE Court being resumed, as in the Trial of *Francis Willis*, and the same Judges being present.

*Cler. of Arr. Middlesex Cryer*, made Proclamation.

*Cryer*. O Yes, O Yes; You good Men of the County of *Middlesex*, summon'd to appear here this Day, to try between our Sovereign Lady the Queen, and the Prisoners that shall be at the Bar, answer to your Names as you shall be call'd,

every Man at the first Call, upon Pain and Peril shall fall thereon.

Then the Jury that were return'd on the Pannel, were all call'd over, and the Appearances of all those that answer'd to the Call, were recorded.

*Cler. of Arr.* Set George Purchase to the Bar.

*Which was done.*

*Cler. of Arr. George Purchase*, hold up thy Hand.

*Which he did.*

*Cler. of Arr.* You the Prisoner at the Bar, these good Men, whom you shall hear call'd, and do  
now



now personally appear, are to pass between our Sovereign Lady the Queen and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to speak to them as they come to the Book to be Sworn, and before they be Sworn.

*Cler. of Arr. Thomas Sutton, Esq;*

*Who appear'd.*

*Cler. of Arr. Hold Mr. Sutton the Book.*

You shall well and truly Try, and true Deliverance make between our Sovereign Lady the Queen, and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence. So help you God.

*Cler. of Arr. John Furness.*

*He appear'd, and was Sworn.*

In like manner the other Ten Gentlemen appear'd, and were sworn, whose Names follow :

### J U R Y.

<i>Thomas Sutton, Esq;</i>	<i>Edward Boswell,</i>
<i>John Furness,</i>	<i>Robert Breakspear,</i>
<i>John Parsons,</i>	<i>Richard Beaknife,</i>
<i>Joseph Parsons,</i>	<i>Richard Hazzard,</i>
<i>William Hargrave,</i>	<i>Francis Higgins,</i>
<i>John Meard,</i>	<i>Humphry Newman.</i>

*Cler. of Arr. Cryer, count these.*

*Thomas Sutton.*

*Cryer. One, and so of the rest.*

*Cler. of Arr. Humphry Newman.*

*Cryer. Twelve, good Men and true, stand together, and hear your Evidence.*

*Are you all Sworn, Gentlemen ?*

*Cler. of Arr. Cryer, make Proclamation.*

*Cryer. O Yes; If any one can inform my Lords the Queen's Justices, the Queen's Serjeant, the Queen's Attorney-General, or this Inquest now to be taken, of the High Treason of which the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance; and all others that are bound by Recognizance, to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance. And all Jurymen of Middlesex that have appear'd, and are not sworn, may depart the Court.*

*Cler. of Arr. George Purchase, hold up thy Hand. Which he did.*

Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *George Purchase*, late of the Parish of *St. Andrew Holborn*, in the County of *Middlesex*, Labourer, for that he not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, &c. (prout in the Indictment, mutatis mutandis,) against the Peace of our Sovereign Lady the Queen, her Crown and Dignity, and against the Form of the Statute in that Case made and provided. Upon this Indictment he has been arraign'd, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to enquire whether he be Guilty of the High Treason whereof he stands indicted, in Manner and Form as he stands indicted, or Not Guilty. If you find him Guilty, you are to enquire what Goods and Chattels, Lands and Tenements he

had at the time of the High Treason committed, or at any time thence. If you find him Not Guilty, you are to enquire whether he fled for it: If you find that he fled for it, you are to enquire of his Goods and Chattels, Lands and Tenements, as if you had found him Guilty. If you find him Not Guilty, nor that he fled for it, you are to say so, and no more, and hear your Evidence.

*Mr. Thomson.* May it please your Lordship, and you Gentlemen of the Jury, *George Purchase*, the Prisoner at the Bar, stands indicted, for that he, not having the Fear of God before his Eyes, but being moved by the Instigation of the Devil, and designing to withdraw the cordial Love and natural Obedience, which true and faithful Subjects of our Sovereign Lady the Queen do and ought to bear towards Her, and intending to disturb the Peace and common Tranquillity of this Kingdom, on the First of *March* last, in the Parish of *St. Clement Danes*, in the County of *Middlesex*, traiterously compass'd and imagin'd to levy War, and stir up Rebellion and Insurrection against our said Lady the Queen within this Kingdom: And that he might accomplish his said traiterous Imaginations and Designs, on the said First of *March*, and in the said Parish being assembled, with a Multitude and great Number of People, armed and arrayed in a warlike Manner, he did then and there unlawfully and traiterously levy War against our said Lady the Queen, contrary to the Duty of his Allegiance, against the Peace of our said Lady the Queen, her Crown and Dignity.

To this Indictment he has pleaded Not Guilty.

Gentlemen, we shall call the Evidence for the Queen, and if they prove the Charge, as laid in the Indictment, we doubt not but you will find him Guilty.

*Mr. Att. Gen.* My Lord, the Prisoner at the Bar stands charged with an Indictment of High Treason. The Species of High Treason has been open'd by the Gentleman that open'd the Record: We shall prove it by calling Witnesses to shew, that he was one of those wicked Persons that did assemble themselves in *Drury-Lane*: We shall shew, that this rebellious Assembly was got together to do Right, as they call'd it, to a Gentleman who was under a Prosecution of the House of Commons; his Name is known, I mean *Dr. Sacheverel*; they resolved, that to do him Justice, they would be revenged on the Meeting-Houses of the Dissenters, and therefore they resolved to pull them all down: That this Design was framed in that Assembly that used to attend *Dr. Sacheverel* to and from his Trial; it was there resolved to pull down the Meeting-Houses in and about the City: That in pursuance of that Design, they did meet in several Places in this County, and the City: That the Prisoner was among those that assembled in *Drury-Lane*; that he was with his Sword drawn; that when the Guards were come (for they were too many to be withstood by the Civil Government) the Constables and Watch were too few to withstand that Assembly, therefore it was necessary for the Preservation of all honest Men's Lives and Estates, for to send the Guards to suppress this Tumult; and it was great Grace in Her Majesty to have that Regard to her People.

People. When they came, they used them with more Tenderneſs than they need have done; they ſpoke to this Man to put up his Sword, and be gone: No, he came with a Reſolution, and 'till that was done, he would not put it up. They came the ſecond Time, and aſk'd him, Do you know that you are reſiſting Authority, in oppoſing the Queen's Guards? You are oppoſing the Queen's Perſon, therefore pray be gone: No, he perſiſted in it, and had the Courage, or Impudence, to aſſault the Officer that was at the Head of the Guards, and would have killed him, if one of the Guards had not, by a lucky Stroke, beat his Sword down. He was ſo devoted to the Cauſe, that he declared he would loſe his Life in the Cauſe; and what was this Cauſe? It was oppoſing a juſt and neceſſary Proſecution; that was carrying on by the Commons of England, before the greateſt Court in England, and, perhaps, in Europe; and they thought fit to find him Guilty of the Charge that was laid againſt him. This gave theſe People occaſion to exerciſe their Revenge on all the Meeting-Houſes. We have had the Determination of the Court oftentimes, that this is levying War within the Statute of 25 Edw. III. When we have made this appear, we don't doubt but the Jury will find him Guilty.

Mr. Soll. Gen. My Lord, we will call our Witneſſes, and prove the Facts.

Then Thomas Tolboy was ſworn.

Mr. Att. Gen. Pray give an Account if you ſaw any Tumult, or Number of People, that attended Dr. Sacheverel; and what Diſcourſe you heard among them; and what Reſolution they came to.

Tolboy. As I was paſſing through the Temple, on Tueſday Night, I ſaw a great Number of People that attended him: I there heard them reſolve upon demolishing Mr. Burgeſs's Meeting; ſome were for doing it then; others for leaving it 'till the next Night.

Mr. Att. Gen. What Night was this?

Tolboy. It was the Tueſday Night.

Mr. Att. Gen. Was it before the firſt of March?

Tolboy. Yes, it was.

Mr. Att. Gen. Was it reſolved by more than one?

Tolboy. By a great many.

Mr. Att. Gen. Then you take it to be general?

Tolboy. Yes.

Purchaſe. Did you ſee me there?

Tolboy. No.

L. C. J. Did you ſtay there any Time?

Tolboy. No; I only heard them diſcourſe of it as I paſſ'd along.

Mr. Baron Bury. Did you ſtay 'till they came to a Reſolution? Or were they only talking of it?

Tolboy. They came to that Reſolution then.

Mr. Baron Bury. Did you ſtay 'till they were agreed upon it?

Tolboy. It was agreed to pull down the Meeting-Houſes, though the Time was not fixed.

Mr. Baron Bury. Did you know any of them, that this was agreed by?

Tolboy. No, none of them.

Mr. Baron Bury. What did you hear them ſay?

Tolboy. I heard them reſolve on demolishing Mr. Burgeſs's Meeting. Say they, Come Boys, we will demolish Dr. Burgeſs's Meeting; others

ſaid, No, we will defer it to the End of the Trial.

Then William Orrel was ſworn.

Orrel. My Lord, before I give my Evidence, I beg Leave to ſpeak a few Words. Purchaſe's Wife has been in my Neighbourhood, and offered Money to ſeveral People, to come and ſwear againſt me, to take away my Reputation: And Yeſterday a Perſon came into Mr. Leonard's Coffee-Houſe, and ſaid publickly, That I was perjured; that when I ſwore againſt Willis, I was perjured; that the Jury would not believe me; and that I was reprimanded by the Court, and the Queen's Council. My Lord, I deſire I may clear myſelf.

Mr. Att. Gen. There is an Information laid before me, which I ſhall take notice of in a proper Place; for it is an intolerable Thing, in any Government, that when we are proceeding in a judicial Way; that when People have the Benefit of the Law that was made for them, a Copy of the Indictment and of the Pannel, Liberty to examine Witneſſes, and aſk what Queſtions they think proper. And they can't ſay, but that there has been a Tenderneſs in us, that are the Proſecutors, not to preſs Things further than the natural Import of them; yet that ſuch Practices ſhould be uſed to diſcourage the Queen's Evidence. I have an Account, that John Roberis, a Mathematical Inſtrument-maker, has, at Leonard's Coffee-Houſe, affirm'd, that the Queen's Witneſs was a perjur'd, forſworn Villain, in giving his Evidence here. I ſhall, in a proper time, endeavour to bring him to Juſtice for it.

L. C. J. It was not improper for him to mention it here. I was ſo far from reproving him, or thinking his Evidence falſe, that I never heard a Man give a fairer, or better Evidence; and no one Witneſs at either Trial, oppoſed one Word he ſaid.

Mr. Att. Gen. Mr. Orrel, pray conſider, you are now upon your Oath; therefore, without regard to Threats, you muſt ſpeak the Truth, and all the Truth, and God forbid you ſhould be afraid of it.

Mr. Soll. Gen. Was you abroad on Wedneſday the Firſt of March? What did you obſerve of the pulling down any Meeting-Houſes? Give an Account of all the Places you were at, and what Concern the Priſoner had in it.

Orrel. About Ten o'Clock, or a little before, I went to Leonard's Coffee-Houſe, and hearing that they were pulling down ſeveral Meeting-Houſes, I went with another Gentleman, Mr. Hawkins, directly to Fetter-Lane: When I came there, I ſaw Abundance of People, a great Mob, carrying the Materials from Mr. Bradbury's Meeting-Houſe, into Holborn: I aſk'd the People where they carried them? they all ſaid, to Holborn. When I had ſtood there a little Time, ſays I to my Friend, Let us go into the Meeting-Houſe; I will ſee; it may be, I may know ſomebody there. I went through a dark Paſſage, and narrow Entry: When I came in, Lord have mercy upon me, ſaid I, it is all down: I turned back to my Friend, Mr. Hawkins; This is deſtroyed, ſaid I, let us go ſee where they burn it. We went to Holborn, and all the way we ſaw abundance carrying Wood quite from the Meeting-Houſe, to the Fire in Holborn. We made no Stay at the Fire, but immediately went thro' Turnſile, and down by Lincoln's-Inn Garden-Wall,



Wall, to the Fire there, which was made of Mr. *Burges's* Meeting-House, which I had been in two Hours before, and saw them pulling it down. When we had been there a little while, I said to my Friend, Let us go towards the other Part of the Town, and see what is doing there. We went along that Side of *Lincoln's-Inn-Fields*, where Mr. *Child's* House is : When we came to the Corner, by my Lord Chancellor's, at my Lord's Door, there stood a Chariot ; said I, I believe there is somebody from Court, I hope there will be a Power, by and by we shall have the Guards. We made no Halt there, but went softly towards the Arch : Before we came to it, I saw a pretty tall Man leading a Body of the Mob through the Fields ; about the middle they made a Halt, and became a bigger Number ; we walk'd softly to meet them : I kept my Eye on the tall Man, which proved to be *Dammaree* : Some of them were for going up *Queen-Street*, and some were for going through the Arch. When they came near the Corner, he struck short off, and went over the Rails just under the Wall, about the middle Way between *Powis* House and the Arch, and there they called a Council : Says I, there is a Council of Mob ; there I saw *Dammaree*. Said they, Where shall we go to now ? To *Drury-Lane*, or *Wild-Street* ? No, said some, to *Drury-Lane*, huzza ! *Wild-Street* is a Hen-Rooft, the other is worth Ten of it. *Dammaree* hollowed, Come along, Boys, we will have them all down, and they carried it by the Majority. I went under the Piazza's at *Powis* House, into *Queen-Street* : When he was in *Queen-Street*, he made ten or twelve Halts, and turned about, Huzza ! High-Church and *Sacheverel* ! God damn all his Enemies ; we will have all the Meetings down to Night ; follow me ; Why don't you come along ? And this he many times repeated ; and thus he headed them 'till he came to *Drury-Lane* ; there some of the Boys ran to find the Meeting-House Door, but they mis'd the Door, and went to some of the Neighbour's Houses ; but they soon found out the Door, and there came a little Fellow, with a Pick-Ax, to break down the Door. A Woman that belonged to the Place came crying, that her Sister was in the House, and would be killed : Don't be afraid, Mistress, said I, I will endeavour to pacify them, if I can : But at last came another Man with a Hatchet, and struck through the Door the second or third Time. God damn you, says he, Don't you know how to break down a Meeting-House Door ? That Fellow can't be found. I went in with them, and there I was assaulted by a Soldier ; and when I was there, they would have me go up Stairs with them. Pray, says I, don't go up, there is only a poor Woman's Room, that belongs to the Place. What will it signify, if you should burn an old Bedstead ? God damn you, says he, are you against *Sacheverel* ? Says I, I have the Queen's Commission : Upon that, he cries out, The Church, the Church ; God damn you, you shall go up. That Man, I suppose, was a Soldier ; he was in a loop'd Waistcoat and white Stockings. I went up with them, and it proved to be Mr. *Earl's* own Lodging ; and there they took up a great many Papers, Manuscripts, which, I suppose, might be Notes. As soon as I came out, I saw the Clock and the Cushion thrown down into the Kennel, in *Drury-Lane* ;

and they were the two first Things that were brought out, as I observed. I ask'd, indeed, Why they began to complain, and give me ill Language ? Says I, Where is *Jolly*, the Waterman ? Oh damn you, says one, he is gone with a Party to St. *James's* : Another said, he was gone to my Lord *Wharton's* ; and others said, he was gone to the Back Door, to break it open ; but I saw him no more after that. When I came out, I went to the Man that keeps the *Griffin* and *Parrot*, and told him, I was sorry to see these Things ; and my Friend went to his Brother's House, which was hard by : After my Friend was come again, Well, said I, I will go into the City, to *Leonard's* Coffee-House, and give an Account to our Friends, of what has happened, for they will stay for us, and will not go to Bed, if I don't go back to Night. We agreed to go home ; but my Friend ask'd, Where was the Meeting-House, in *Wild-Street* ? Says I, I know *Wild-Street* ; says he, I believe it was the old Mass-House : So we went through *Wild-Street* ; and as we came to the Arch, we met a Detachment of the Guards coming on a full Trot. Says I, Gentlemen, pray make haste, they are pulling down the Meeting in *Drury-Lane*. I put out my Hand to the Captain, This is the best Way, said I, through *Wild-Street* : And another Detachment went another Way. As soon as they came (I was near the Officer) he commanded them to file off, and disperse the Mob ; and they rode among them, to disperse them. While I was there, I saw a Man with his Sword drawn, near the *Griffin* and *Parrot*, who was the Prisoner at the Bar : I went over the way, and spoke to him.

*Purchase*. What time of Night was this ?

*Orrel*. It was about half an Hour after Eleven. Several of the Horse rode up to him, and then he retired under the Bulk, and push'd with his Sword at several of them ; and some of them struck at him with the Flats of their Swords. Says I, to my Friend, I wonder they don't cut him to Pieces. I went to him ; Pray, says I, what are you doing ? Pray go home. He turn'd his Back, and I thought he had been gone. In a Minute's Time, the Guards had rode round the Fire, and dispersed the Mob a little : In a Minute or two, I saw the Prisoner with his Sword drawn, hollowing and flourishing his Sword in the Middle of the Street, just by the Kennel in *Drury-Lane*, and fronting the Guards. I came to him, and laid my Hands upon him, and push'd him back, What are you doing ? Two Foot-Soldiers came to me, and said, What do you do ? He is drunk ; he is an honest Gentleman : Says I, take him away then, if he is your Friend. Says I to him, Do you know what you do, in opposing the Guards ? You oppose the Queen's Person. Says he, God damn you, are you against *Sacheverel* ? I am for High-Church ; I will be for High-Church and *Sacheverel* ; I will lose my Life in the Cause ; and this many times repeated. I went over the way, and he advanced with his Sword, and run at the Officer, just at the Left Flank : At that, I saw a Gentleman's Horse spring forward, and he struck his Sword down. I went back, thinking there would then be firing, and I might be kill'd.

*L. C. J.* Pray repeat the Words again, which he spoke to you, when you told him, that resisting the Guards was opposing the Queen.

*Orrel*.

*Orrel.* I said, Sir, (I thought he was some Country Gentleman, and that he was in Drink;) Do you know what you do in opposing the Guards? You oppose the Queen's Person; I spoke it heartily and in Friendship, I had my Hand on his Breast, and he had his Sword in his Hand, says he, God damn you, are you against *Sacbeverel*? I am for High-Church and *Sacbeverel*, God damn all his Enemies; I will lose my Life in the Cause; I will fight the best of them; and advanced and huzza'd; Boys, I will lead you on for High-Church and *Sacbeverel*. After this was over, as I observed, he run at the Officer; if he had touch'd him, I believe he would have run him through the left Flank. One of the Gentlemen of the Guards, I saw his Horse spring forward; he reach'd over his Horse, and struck at the Prisoner's Sword; and then I retired, and went lower into the Lane; for I thought if there was firing, I should be in danger.

*Mr. Soll. Gen.* Before you go from this Place, where he flourish'd his Sword, let me ask you, Did he advance towards the Guards, or did they advance towards him?

*Orrel.* As soon as that Gentleman had sprung forward, and struck at his Sword, he endeavoured to shelter himself under the Bulk, and one or two of them rode up to him.

*Mr. Soll. Gen.* Did he retire under the Bulk, after he had pass'd on the Officer?

*Orrel.* This was a second time, when he pass'd at the Officer; he pass'd at the Grenadiers before, but these were the Life-Guard.

*Mr. Soll. Gen.* You say he run at the Officer?

*Orrel.* As I run over the way to him, he said, God damn them, he would lose his Life for the Cause; He was for High-Church and *Sacbeverel*; Damn all his Enemies, he would fight the best of them. Come Boys, fall on, I will lead you on; and flourish'd his Sword over his Head, and went directly at the Officer, and made a Push at him, but his Sword was beat down.

*Mr. Soll. Gen.* Now go on.

*Orrel.* After this I retired, I never staid to see what was done with him; I thought they had either killed him, or confined him: I thought there was like to be an Engagement between the Mob and the Guards, so I retired down the Lane, and there I met with a Clergyman at a Tavern Door, and I stood and talked with him, till the Foot-Guards came by; says I, Captain, the Mob is very strong, I wish you good Success. As the Mob went by, they cry'd, Damn them, we will be even with them to Morrow Night; they dare not fire upon us.

*Mr. Att. Gen.* If you will ask him any Questions you may.

*Mr. Darnell.* You say, that at first, when you saw the Prisoner, he retired under a Bulk.

*Orrel.* My Lord, the Horse rode among the Mob. When I saw the Prisoner first, I was on a Bench at the Pewterer's Corner; and I saw him on the other Side the way; and when the Horses came up, I saw him under the Bulk, with his Sword, and I saw him flourish his Sword, and hollow.

*Mr. Darnell.* Was that before the Guards came up to him?

*Orrel.* The first time that I set my Eyes on him, he had his Sword in his Hand.

*Mr. Darnell.* Therefore, I ask, Whether you saw him before you saw him under the Bulk.

*Orrel.* I don't know what you mean by under the Bulk.

*L. C. J.* I understood him, that when the Horse came up, he retired under the Bulk.

*Orrel.* When I first saw him, he was near the Houses, and he had his Sword then drawn; I had no Sight of him till his Sword was drawn; afterwards I run cross to him, and being sorry to see him so desperate, I spoke to him.

*Mr. Darnell.* I ask, if you saw him do any thing before he was under the Bulk?

*Orrel.* He had his Sword in his Hand, and hollowed, and flourish'd his Sword.

*Mr. Darnell.* Did he do any thing before they rode up to him?

*Orrel.* I saw him with his Sword in his Hand; when he was before the Bulk: What I call under the Bulk, is against the Bulk.

*Mr. Darnell.* Now I ask, Was he not on the Ground, when you say he was under the Bulk?

*Orrel.* He was upon his Legs, upon the Ground: He stood upon his Legs, as I do now; and when the Guards rode up, he went back against the Bulk.

*Mr. Darnell.* Did the Guards ride near him?

*Orrel.* Yes, I saw one or two of them strike him.

*Mr. Darnell.* What did he do when they came up to him?

*Orrel.* He push'd, or rather poked at their Horses.

*Mr. Darnell.* Now, where is the second Place that you saw him?

*Orrel.* I perswaded him to go home; but I saw him the second time at the End of *Long-Acre*.

*Mr. Darnell.* How far was that from the first Place?

*Orrel.* About the Breadth of this Court.

*Mr. Darnell.* Did you not apprehend him to be mad, or very drunk?

*Orrel.* I believe he had been drinking hard.

*Mr. Major.* Did you observe which way he was coming, when you first saw him?

*Orrel.* He was standing still.

*Mr. Major.* Did you see him among the Mob?

*Orrel.* The Mob was then as thick as could be; for when the Guards rode among them, they divided of both Sides the Street, and were all about him.

*Mr. Major.* Which Side of the Street was you of, when you first saw him?

*Orrel.* When I first saw him, I was upon a Bench, on the Pewterer's Side. I saw him first on the other Side of the Way, by the *Griffin* and *Parrot*, and then run over to him, and desired him to go home. Two Foot-Soldiers said, he was an honest Gentleman; then pray, said I, take him home.

*Mr. Darnell.* When you say he was offering to push at the Officer, was the Mob dispersed?

*Orrel.* As soon as the Guards came up to them, they would run back forty or fifty Yards; and as soon as ever their Backs were turned, they got together again.

*Mr. Darnell.* When he made the Push at the Officer, were they not dispers'd?

*Orrel.* They were drove into smaller Bodies, of fifty or one hundred together, and filled all the Doors and Bulks.

*Mr. Darnell.* Did the Prisoner go with them, or stay?

*Orrel.*



*Orrel.* After the Guards had first rode round the Fire, I lost him for a Minute or two, 'till I had turned about, and was looking for my Friend; and then I saw the Prisoner with his Sword drawn, in the middle of the Kennel-way, at the End of *Long-Acre*, fronting the Bonfire, and there I went, and spoke to him, as I told you before.

*Mr. Baron Bury.* Was any body with him then?

*Orrel.* There was a pretty many Boys, and Mob getting together: The Mob was thick of both Sides of the Way, and on the Bulks; and as soon as he appeared with his Sword drawn, they gathered together very thick.

*Mr. Soll. Gen.* Pray describe whereabouts is the *Griffin* and *Parrot*; it may be material by and by. You say the Pewterer's Shop is the Corner of *Queen-Street*, now where is the *Griffin* and *Parrot*?

*Orrel.* Just over-against it.

*Mr. Att. Gen.* How many do you compute were got there together, when you came there first?

*Orrel.* I can't tell; the Lane was so thick from the Meeting-House-Door to the End of *Long-Acre*, that one could not cross the way without crowding: There might be two, or three, or four Thousand.

*Mr. Major.* Did you observe a Watchman that was near him at any time?

*Orrel.* There were several of them in Parties.

*Mr. Major.* Did you observe any thing said by any of the Guards, to any Watchman?

*Orrel.* Not to any in particular.

*Then Richard Ruffel was sworn.*

*Mr. Att. Gen.* Look upon the Prisoner, and give us an Account whether you know him; and what you can say of his being among the Mob.

*Ruffel.* I was commanded to go with my Serjeant into *Drury-Lane*; I am one of the Horse-Grenadiers: When we came into *Drury-Lane*, we were commanded to return our Bayonets, and draw our Swords; and when we were drawn round the Fire, over-against *Queen-Street* End, this Gentleman, the Prisoner, came down the Lane, with his naked Sword, huzzaing, and flourishing it over his Head; with that another Soldier, and I, struck at him; he got between us, and made several Pushes, and then we were commanded on the other Side the Way; and then, I suppose, he fell into the Serjeant's Hands.

*Mr. Soll. Gen.* Did you know him before that time?

*Ruffel.* I knew him when he rode in the first Troop of Guards.

*Mr. Soll. Gen.* Then he has been a Soldier.

*Ruffel.* Yes.

*Mr. Soll. Gen.* Are you sure this is the Man?

*Ruffel.* This is the Man that drew his Sword, and made several Pushes.

*Mr. Soll. Gen.* Was he at the Head of the Mob?

*Ruffel.* He came down at the Head of them, and swore, God damn you, Are you for Low-Church, or High-Church and *Sacbeverel*? I am for *Sacbeverel*.

*Mr. Soll. Gen.* This, you say, he said at the Head of the Mob.

*Ruffel.* Yes.

*Mr. Att. Gen.* Did you see him at any time after this?

*Ruffel.* I saw him several times, but did not come near him.

*Mr. Soll. Gen.* Are you sure this is the Man?

*Ruffel.* Yes.

*Mr. Soll. Gen.* You knew him before?

*Ruffel.* Yes.

*Mr. Major.* You say you had drawn round the Fire: Was there any Opposition? Or, did the Mob disperse themselves?

*Ruffel.* They were very tedious; and as we dispersed them one way, they drew together in another Place. Afterwards we were commanded to draw into a Line, and to draw back our Horses, that no body might get behind us. I drew back into a Door-way, and he was got behind, by the first Horse, between our Horses, and then we struck at him.

*Mr. Soll. Gen.* Did the rest of the Mob endeavour to follow him?

*Ruffel.* The rest were more afraid, and kept off; but he swore, Damn him, he would come.

*Mr. Soll. Gen.* How did you strike him?

*Ruffel.* With the Flat of the Sword.

*Then Southerland was sworn.*

*Mr. Att. Gen.* I think you are the Officer that commanded that Party of Grenadiers; look upon the Prisoner, and tell us if you know him.

*Southerland.* I never saw him before that Night; but I am confident that is the Man that had his Sword in his Hand, for I saw him several times that Night.

*Mr. Att. Gen.* Now pray, what did you see him do?

*Southerland.* I was commanded by the Colonel of Foot, to go to *Lincoln's-Inn-Fields*; accordingly I went with a Party of Grenadiers, and dispersed the Mob there: When I had done that, I came back to the Horse-Guards in *Drury-Lane*: I drew them up in a Line, and gave them Orders to let none pass behind them, or before them, and then I rode down to Captain *Horffy*, for Commands; (for when we had joined the Horse, I was under his Command:) As I came back, I saw *Purchase* flourishing his Sword, and crying out, *Sacbeverel, Sacbeverel*. I rode up to him; says I, Are you encouraging the Mob? Damn you, says he, I am for *Sacbeverel*; with that, I rais'd my Hand, and he drew back, and offered his Point, but did not thrust. Says I, You are mad, you are distracted; go to your Lodgings: Says he, I am one of the Life-Guard: He said he was one, or had been one: Says I, the more Shame for you to be here. I struck at him, and he run back towards the Horse-Guards. I rode down again to Captain *Horffy*, and I saw him again at the Corner of *Long-Acre* in the same Manner. Seeing him there again, says I, to Captain *Horffy*, This Man has been troublesome to me on my Post: Says he, Make up to him, and cut him to Pieces: As I rode to him, he got into *Long-Acre*, and I saw no more of him.

*Mr. Soll. Gen.* You say he offered his Point to you; Did you see him do so to any other?

*Southerland.* No; I saw him offer no Violence.

*Mr. Darnell.* Was there any Mob at the Corner of *Long-Acre* with him?

*Southerland.* There was a Party of them, and the Horse-Guards were dispersing them.

*Mr. Major.* When you rode up to him, and he went from you, Was there any body with him?

*Souther-*

*Soutberland.* I can't be positive of that.

*Mr. Major.* Did you observe him poke at any Horfes?

*Soutberland.* No; I saw no such Thing.

*Then George Richardson was sworn.*

*Mr. Att. Gen.* What Troop of Guards are you of?

*Richardson.* The Third Troop.

*Mr. Att. Gen.* Look on the Prisoner, and tell us whether you remember him.

*Richardson.* I know him well, for we were abroad together in *Flanders*: He was in the First Troop of Guards when I was in the Third.

*Mr. Att. Gen.* Now did you see him among the Mob the First of *March* at Night?

*Richardson.* I was upon the Guard that Night, and something after Ten, an Alarm came to us, that the Mob was up: We were ordered immediately to mount, and staid some time till the Foot pass'd us at *Whitehall*. When we came near *Lincoln's-Inn-Fields*, we left the Foot, and made to *Drury-Lane*; when we came there, the Officer commanded us to file off, and disperse the Mob; which we did. I was riding among the rest, for they filed off; not four together, but singly, and when I came back again towards the Fire, I saw there *Mr. Purchase*, and my Officer, Captain *Hensbrough*, was talking to him; what he said I don't know, but as he pass'd him, *Purchase* made a Thrust at him, but I beat down his Point.

*Mr. Att. Gen.* Who did he thrust at?

*Richardson.* My Officer, Captain *Hensbrough*.

*Mr. Att. Gen.* Where is he?

*Richardson.* In the Country.

*Mr. Att. Gen.* Then you say you beat down his Point.

*Richardson.* I went to cut at him; says I, You Rascal, have you a mind to kill my Officer? I went to cut at him, and he threw himself against a Bulk, and I hit the Penthouse with my Point, and my Blade broke to Pieces.

*Mr. Darnell.* You say you saw him talking with the Captain; Had he his Sword drawn at that Time?

*Richardson.* Yes.

*Mr. Darnell.* Were there any Mob about him then?

*Richardson.* They were very thick about us of every Side; we were dispersing them as well as we could.

*L. C. J.* Did the Prisoner know Captain *Hensbrough*?

*Richardson.* I believe he did; for he was abroad with us at the same Time when Captain *Hensbrough* was there.

*Mr. Att. Gen.* My Lord, we have done with our Evidence.

*Mr. Darnell.* I am of Council with the Prisoner. And, my Lord, I shall make no Dispute, but, as the Gentlemen on the other Side say, there was a great tumultuous Assembly, that was gathered together with an Intention to pull down the Meeting-Houses: And I shall make no Dispute but it was High Treason in all that were guilty of that Intention, or assisted those that were so. But on the other Side, we must beg Leave to say, that any Person that was going along the Street and fell into Company of those that had that Design, though they might use some Expressions which were Evidences of the Intention; yet if they were not in the In-

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ention, nor did any thing that was assisting in the Execution of it, they will not be guilty of High Treason.

They have offered Evidence to shew there was such an Intention. The first Witness is only to shew, there was a general Intention. And I must take Notice, that what he says does not shew such a general Intention as is necessary to make this Fact High Treason: For he says, as he went through the *Temple*, he heard some People say, they would go and pull down *Burges's* Meeting-House; others opposed it: Some were for going that Night, and others for deferring it till the Trial was over. Now if they came to no other Resolution, than that some were for going that Night, and others after the Trial was over; then the Action which happened the next Night, and before the Trial was over, could not be an Execution of that Intention; nor can they say that any one of those that were at the *Temple* was at this Execution. And therefore, if there be no other Evidence to shew a general Intent, then this Action will stand without any previous Intent, and only be a sudden Execution of a Design.

The first Witness to the Fact is *Orrel*: And I must beg Leave to take Notice of the Introduction to his Evidence, which he would make use of as a Reflection on the Prisoner; but I believe the Gentlemen of the Jury will not think that he had any Hand in it. There may be wicked People enough to say such Things; and no doubt Mr. Attorney will take Care that they shall be prosecuted according to their Deserts. And I would take this Opportunity to say, that I don't see but he is free from any such Charge. I see no Inconsistency between his Evidence, and that which was given for the Prisoner. But as to that Suggestion, that the Prisoner's Wife has been about in his Neighbourhood, I don't see any thing of that proved.

As to the Fact, he says, he came up *Drury-Lane* half an Hour past Eleven; that there he saw the Prisoner from the other Side the Way, with his Sword drawn; that he was hollowing and waving his Sword; that the Guards coming up, he retired toward the Bulk; and that he pushed at the Guards. The next Place he saw him at was a little from thence amongst the Horse-Guards; there he was waving his Sword, and crying, Damn all *Sacheverel's* Enemies; I will fight them all; I will lose my Life in the Cause: Come on, Boys; and to that purpose: And that he did push at the Captain of the Guards. I think these Expressions carry a Face of Madness, or great Drunkenness; no body in his right Senses would think himself fit to fight all his Enemies, and call to them to fall on, when at the same time he stood single, and there were none to fall on.

*L. C. J.* He did not say there were none: He said they were not dispersed.

*Mr. Darnell.* I asked whether any body was near the Prisoner when he used that Expression; and he said they were divided.

*L. C. J.* Call him again, and see if he said so. What say you? Did he stand single and alone, and all the rest at a Distance?

*Orrel.* No; I saw him at the Head of a smaller Body just at the Kennel in *Long-Acre*: I went and spoke to him, and pushed him back; and then there was a greater Number.

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Mr. Darnell. I ask, When he pushed at the Captain, was there any body close to him?

Orrel. There were some before him; but they did not keep so close to him.

L. C. J. Where was it that you say he called to them to fall on?

Orrel. At the End of *Long-Acre*.

L. C. J. Now were there any others coming up, or following him?

Orrel. A great many were close to him then; but he advanced farther than they would follow him.

Mr. Darnell. My Lord, I say, this Expression did speak a Madman, or a Man out of his Senses in Drink; but the Substance of what he said was only, That he was for *Sacheverel*, and would die in the Cause. *Russell*, one of the Horse-Grenadiers, says he saw him there with his Sword; and that he got in behind, and was between the Horses: So that he must come in among the Horses by accident; if he had been resisting the Guards, doubtless he would have been at the Head of them, and not have got in between them: So that he could not be then resisting them, but come there for Shelter, rather than to resist them. The third is *Southerland*: He says, he saw the Prisoner hollowing for *Sacheverel*, and in a little time lost Sight of him, and saw him afterwards at the End of *Long-Acre*; and that no body was then with him. *Richardson* says he knows him, and saw him talk to the Captain of the Guards; and it would have been proper to have produced the Captain, to give an Account what passed between them, to know whether he was encouraging the Mob, or defending the Guards. The Discourse that passed between them, we think, would have been material: But we think it is an Evidence for us that it was not what is represented; for if it had been such a Discourse, the Captain would have ordered him to be secured: Therefore we think it looks as if the Captain did not take him to be concerned in the Matter. They do not pretend to shew that he was at any of the Meeting-Houses; that he was instrumental in pulling them down; that he had any Part of the Materials; that he had any Ensigns or Banners: But the first Account they give of him was about half an Hour after Eleven; and then most, if not all, the Mischief was over: So that all they can say is, That he came in at the latter End of it.

As to our Case, we will shew that the Prisoner is in his Employment a Bailiff; at the Time that is mentioned, we have a good Account to give of him all the Day long: In the Morning about Nine, he had Business to arrest one, and sent for one *Amos Winch*, to fetch a Marshal's Court Writ to arrest the Man in *Hatton-Garden*: About Eleven the Plaintiff and Defendant met together at the *Crown* in *Chancery-Lane*, to end that Matter: At Twelve he went from thence to the *Savoy*; after that he went to one *Grove's*, that keeps a Brandy-Shop; and those of his Employment give themselves a great Liberty in drinking; and there he staid a-while. From thence he went to the *Horse-Shoe* Tavern; and then returned to the Brandy-Shop again. About Nine he went to his own House; when he came thither, there was other Business required him to go abroad; for Mr. *Broad* the Bailiff had sent for him to the ——— Tavern in *Covent-Garden*; and there he staid till Eleven. He was so much

in Drink, that as he was going home to Bed, he was met in the Street, and offered a Chair: But before he got into the Chair, the Mob were got together; and they seeing him so much in Drink, made Sport with him; and he did express himself for *Sacheverel*, as every body was forced to do. After they had used him thus, they put him into a Chair, and carried him home. He was in so sad a Condition with Drink, that it was apprehended he would have died; his Wife and those about him were forced to send for a Physician; accordingly they sent for one *Plaxton*, and he let him Blood; which was done before Twelve o'Clock: And he continued thus ill all the next Day. This will shew that he was not in the original Intention; that he came accidentally at Eleven, or half an Hour after; and then the whole Transaction was over: And however he might behave himself through that Excess of Drink, yet they must offer some Evidence that he was in the Intention or Execution of that Design; for the Assault made on the Guards is barely an Assault, and can't be High Treason. If he did no more when he met the Guards, but draw his Sword to defend himself against the Horses that were coming so near him; if he did retire, and only push at the Horses, that will be no manner of Offence; if he did misbehave himself, by Reason of the Excess of Drink, and offer to push at a Man, if he had killed him, it had been Murder; but it could not have been High Treason. When we have proved our Case, we will leave it to your Lordship and the Jury, and hope there will be no Evidence to convict us.

L. C. J. I would ask where that Captain is?

*Richardson*. He is in the Country: He married a young Lady lately, and is gone into the Country.

L. C. J. When did you see him?

*Richardson*. Not this Fortnight.

Mr. Major. My Lord, the Offence which the Prisoner stands charged with is a great Offence, no less than High Treason, in levying War against her Majesty; the Punishment, if guilty, will be the most severe; therefore we hope the Gentlemen of the Jury will expect plain, positive, and direct Proof, and will not be guided by private Opinion, Presumption, or Probability. My Lord, I beg Leave to consider how far the Evidence given will affect the Prisoner, as to the Crime he is charged with. The Treason they have given Evidence of is, an Intent to pull down Meeting-Houses in general: It is not pretended that the Prisoner was concerned in that, or was at any of the Meeting-Houses; but only they would prove him guilty, by aiding and assisting those Persons that were concerned in that Fact. Now it will not be pretended, that all that were present where those Mobs were are guilty of this Crime: Many were there out of Curiosity, many by Accident, many passing along on their Occasions; which we say was the Case of the Prisoner: It can't be imagined that those Persons that appeared there single were engaged in the Design. We say, There was no Resistance made by him to the Guards; that he seconded no body, nor did any body second him: And when he came to the Guards, if he had appeared to be a Leader of the Mob, he was then in their Power, and they might have secured him. One of the Officers of the Guards spoke to him; but

but what passed don't appear. If this Fact had happened at any other Place where he had happened to meet the Guards, and he had assaulted them; that Fact in itself considered, would not have amounted to High Treason. As to the Place, that it was near where the Mob was gathered together, that will be accounted for, because it was in his Way home, and near the Place where he lived. They take Notice of several Expressions he made use of at that Time; of offering to fight the Guards, and damning *Sacheverel's* Enemies, and the like; we think these are such Expressions as might be expected from a drunken Man, a Man in the Condition he was in; and it don't appear to be in Aid and Assistance of that Fact, which those tumultuous Persons were about. It don't appear that he was privy to it, and the Matter was over before he came. We shall give an Account of his coming to the Place where the Guards were; that he was not among the People, but coming in his Way home. And if it appears not to be done in Aid of that traitorous Design, and of those Persons that were concerned in it, it will not be Treason: For a Man to be singly flourishing his Sword when he was in the Power of the Guards, it shews the Action of a Man not in his Senses; and that is a more probable Account of the Matter, than that he did it in Aid of those traitorous Persons. So that if that be only doubtful, and the Fact is not levying War; if it be only doubtful, and is capable of being construed the one way or the other; yet in the Case of Life the Jury will, in favour of Life, incline rather to acquit than condemn. We will call our Witnesses, and hope to give you Satisfaction that he is not guilty of this Crime.

*Then Amos Winch was sworn.*

Mr. Darnell. Give an Account to my Lord, and the Jury, Whether you remember Mr. *Purchase* any where, the First of *March* last? And when you saw him first?

*Winch.* He call'd on me, between Eight and Nine in the Morning, to go with him, to execute a Writ: I went with him, and we took the Person.

L. C. J. I will not hinder you from taking your own Method, if you think it will be of any Use, to shew where he was all Day.

Mr. Darnell. It may be infer'd from that Evidence, that he was not concern'd in the Design.

L. C. J. Then you would make use of it to shew, that he was not in the Design all the Day, but to make his coming there accidental? I don't find that the Queen's Council say he was at any Consultation.

Mr. Darnell. Pray give an Account, when he first came to you, and when you parted.

*Winch.* He came to me in *Sheer Lane*, to go with him to execute a Writ; and it was between Eleven and Twelve when they paid the Money, and then he went away with the Plaintiff.

Mr. Att. Gen. Are you acquainted with the Prisoner?

*Winch.* Yes; very well.

Mr. Att. Gen. What Profession is he of?

*Winch.* He is an Officer to the High Bailiff of *Westminster*.

Mr. Att. Gen. Who is he an Officer to?

*Winch.* To Mr. *Huggins*.

*Then Cornelius Johnson was sworn.*

Mr. Darnell. What Time of Day did you see *Purchase* upon the First of *March* last?

*Johnson.* I was with him between Eleven and Twelve, at the *Crown* in *Chancery-Lane*.

Mr. Darnell. How long did you stay?

*Johnson.* From thence we went into the *Strand*, and I parted with him at the *Savoy*.

Mr. Darnell. What Time of Day?

*Johnson.* About half an Hour after Eleven.

Mr. Darnell. Who was he going to at the *Savoy*?

*Johnson.* I don't know to whom.

*Then Benjamin Holden was sworn.*

Mr. Darnell. Pray give an Account what Time you was with the Prisoner on the First of *March* last.

*Holden.* Mr. *Johnson* was going towards *White-ball*, so we went all three together; and Mr. *Purchase* called on one that owed him some Money, but he was not at home; but, says he, I will find him out; but he did not meet the Man, so we went to drink a Pint of Wine, and we agreed to dine together, at Two o'Clock, in *Chancery-Lane*, which we did; and after Dinner, says I to *Purchase*, Here is a sad Noise and Rout, no Business is to be done, let us sit, and smoke a Pipe; so we sat 'till Four o'Clock. Says I, Where are you going? I am going home, says he; but instead of that, he went to *Grove's* Brandy-Shop, at *Long-Acre*; there he went and drank.

L. C. J. Did you go with him?

*Holden.* No; but he said he would go there.

L. C. J. How do you know what he drank?

*Holden.* *Grove's* Man told me so.

L. C. J. What time did you meet him again after you had parted with him going to *White-ball*?

*Holden.* It was about Two.

L. C. J. And what time did you part with him to go there?

*Holden.* It was nigh Twelve o'Clock.

Mr. Att. Gen. About Four, you say, you ask'd him to smoke a Pipe; What did you say to him?

*Holden.* Says I, There is a great Noise about, there is no doing Business.

Mr. Att. Gen. What did you mean by that great Noise?

*Holden.* I meant, about Dr. *Sacheverel*; there was a great Noise about the *Temple*.

Mr. Att. Gen. Was the Mob up then?

*Holden.* No.

Mr. Att. Gen. But he would not stay with you?

*Holden.* No, he said he would go home.

*Then John Lane was sworn.*

Mr. Darnell. Do you live at *Grove's*?

*Lane.* Yes.

Mr. Darnell. What time of Day did *Purchase* come to your House?

*Lane.* A little before Four o'Clock; and he drank with my Master till past Five. My Master gave him a Business to dun a Gentleman, and then they went to the *Horse-Shoe* Tavern and staid there till Eight; then he came back again, and drank with us, and was very drunk.

L. C. J. When he went to the Tavern, how long did he stay there?

*Lane.* Two Hours.

L. C. J. How do you know?

*Lane.* I am sure of it; the Man of the House will witness it.

Mr.



Mr. Darnell. How long did he stay at your House?

Lane. He staid there, and about the Door, till half an Hour after Eight.

Mr. Darnell. Where did he go then?

Lane. He went homewards, I suppose.

L. C. J. What did he do about the Door?

Lane. He went to the Door, and drank there with some Men.

L. C. J. Who were they?

Lane. One *Alton*, and *Gering*, two Officers.

*Then Dupper was sworn.*

Mr. Darnell. Do you remember that the Prisoner came to your House the First of *March* last, with Mr. *Grove*?

Dupper. Yes.

Mr. Darnell. How long did he stay?

Dupper. I believe he was there about two Hours.

Mr. Darnell. What time did they come in?

Dupper. In my Opinion, it was about Five or Six o'Clock.

Mr. Darnell. How long did they stay?

Dupper. They went away a little before Eight, to the best of my Knowledge.

Mr. Darnell. Were they there all that while?

Dupper. Yes, they were, upon my Oath.

Mr. Darnell. Did the Prisoner and *Grove* go away together?

Dupper. Upon my Oath they did.

L. C. J. What time did the Mob begin that Night?

Dupper. I did not mind.

*Then Sarah Roch was sworn.*

Mr. Darnell. Did you see the Prisoner at Mr. *Grove's*?

Roch. I was at Mr. *Grove's*, when Mr. *Purchase* and he came back from the Tavern: I saw him in Drink, and desired him to go home. I was half an Hour in the Shop; when he was there, he was very much in Drink, and at last he went home along with me. When he came home, he sent for two Pots of Ale, and was at home half an Hour, and there came a Porter from a Tavern in *Covent-Garden*, to let him know somebody wanted him there, and he took Coach to go there.

Mr. Darnell. What Time was that?

Roch. It was about half an Hour after Nine.

Mr. Darnell. You say he went in a Coach, Was he in Drink then?

Roch. Yes.

Mr. Darnell. Did any body go with him?

Roch. Yes, Mr. *Loveday*.

Mr. Darnell. Why did he go with him?

Roch. His Wife desired Mr. *Loveday* to go along with him, because he was so much in Drink, and to bring him home again.

*Then Thomas Loveday was sworn.*

Mr. Darnell. Give us an Account when you saw the Prisoner that Night.

Loveday. I went home with him about Nine o'Clock, and he sent for two Pots of Drink, and while we were drinking them, Mr. *Broad* sent for him to a Tavern in *Covent-Garden*. His Wife, at first, would not have had him go, but I said, It may be Mr. *Broad* had Business with him; so she desired me to call a Coach, and to go with him, and to see if Mr. *Broad* was there;

so I went with him to the Tavern, and left him there, and came home.

*Then Jacob Broad was sworn.*

Mr. Darnell. Did you send for the Prisoner that Night that the Mob was?

Broad. I have known him some Years: I happen'd to have occasion to have some Goods appraised, which I had taken in Execution: I sent for Mr. *Averell* and Mr. *Holloway* to appraise them; and when they had appraised them, I desired them to go to some House, and give me an Inventory; then we agreed to go to the *Cross-Keys Tavern*; this was about half an Hour after Seven. I left them there, making up their Inventory, and went to a Coffee-House hard by: There I heard of a Gentleman, that was to be in that Tavern, whom I had a Warrant against, for two Hundred Pounds: I had no body with me; I went to the Tavern, and then it was half an Hour after Eight; says I, I have no body with me, I will send for *Purchase*: He came to me in a Coach, much in Drink; says I, What do you come to me for, fuddled? You are not fit to go about Business: I will not go again, says he, unless you will give me a Coach, and a Pint of Wine. I said, it was needless, I had rather give him a Bottle another Time; but I did give him a Pint, and he staid 'till between Nine and Ten. Mr. *Averell* had occasion to go away, and he left the rest of us. He was much in Drink, and I could not get him out of the Room. When he is sober, he is a very civil Fellow, but when he is drunk, he is quite mad. About Ten, I took my Leave of *Holloway*, and went over *Covent-Garden* with him; he hung upon me, and was very troublesome; I bid him take a Coach; says he, It is a mobbing Night, I will see you home: Says I, You shall not see me home: Says he, I will call a Chair for you, for you are drunk; though I was as sober as I am now. He call'd a Chair, and to humour him, I went into it; Now, says I to him, pray do you go home: Now by that time, I believe it was within a Quarter of Eleven, or thereabout. After I left him, I had not been at home above an Hour, but I had News brought me that he was beaten, and used very ill, and carried home very bad; and this is all I know of the Matter.

Mr. Major. Where did you part with him?

Broad. It was in *Bridges-Street*.

Mr. Major. Did you see which way he went?

Broad. I did not see which way he turn'd, but it was about Eleven o'Clock, and he told me, he would go directly home.

L. C. J. Was the Mob up in *Drury-Lane*, when he came to you?

Broad. When we were in the Tavern, the Master of the House came and told us, that Mr. *Burgefs's* Meeting-House was pull'd down, and burning; and that they had begun to pull down another. This was about Ten o'Clock.

L. C. J. Where is his House?

Broad. In *Drury-Lane*, a little way from *Long-Acre*.

L. C. J. Then after you parted with him, he must go through the Mob. Now you, who were as sober as ever you were in your Life, and sensible how bad he was, must have taken so much Care as to consider, which way he was to go home: How comes it to pass, you did not see him home?

Broad.

*Broad.* My Lord, I would have seen him home, but I am not a Man that engage myself in Mobs, for those of my Employment generally suffer in Mobs; I avoid them if I can; and if I meet them, I give them all the good Language I can.

*L. C. J.* But there is another way you might have secured him from the Mob, for I suppose he was well disposed to have staid longer at the Tavern.

*Broad.* Yes; but I did guess, that at Eleven o'Clock those Mobs are generally over; and before we came out of the House, we heard the Guards were abroad, and I guess'd he might go home safely the Way he was to go.

*L. C. J.* You have given another Reason why you should take care of him, because he was troublesome in Drink, and was a Bailiff, and liable to be affronted; therefore you should have taken care of him.

*Broad.* I believe, if it had been another Night, I might; but if I had gone with him, then I might have been in the same Condition with him: I don't know but I might have been forced to say something or other, to save myself from the Mob.

*Purchase.* My Lord, the Meeting-House is as near my House as it is from hence to your Lordship; at a back Window I can hear them preaching.

*Then Mr. Bembridge was sworn.*

*Mr. Darnell.* Pray give an Account of what you saw and observed of the Prisoner, that Night that the Mob was up.

*Mr. Bembridge.* My Lord, I was at an Oil-Shop, at *Long-Acre* End, with several others, about Eleven o'Clock, when the Guards came and dispersed the Mob that were there. When they had been there a Quarter of an Hour, or thereabout, the Prisoner came to the End of *Long-Acre*, and stood there by himself, and no body near him. One rode up to him, and talk'd to him some time; they had not talk'd long, before two more rode up, and fell upon him, and drove him a few Doors; he retired, and there they left him.

*L. C. J.* Who were the others that were with you in the House?

*Mr. Bembridge.* There was one *Jefferies*, who lives in *Bloomsbury-Square*, and a Watchman in *Grays-Inn* Passage, and one *Mr. Cheekly*: There was another Gentleman of the *Temple*, but I don't know his Name.

*L. C. J.* What was your Business there?

*Mr. Bembridge.* I was going home, and the Mob was there, and I got in for Shelter.

*L. C. J.* Who did you see at the Fire, besides the Prisoner?

*Mr. Bembridge.* There was no body there then.

*L. C. J.* When did you see the Prisoner first?

*Mr. Bembridge.* It was about Eleven.

*L. C. J.* Were the Guards there then?

*Mr. Bembridge.* Yes; and they had dispersed the Mob.

*L. C. J.* What do you mean by the Mob being dispersed? Was the Street clear? Or were they of the Sides of the Street?

*Mr. Bembridge.* Some of the Guards rode one way, and some another; and they drove the Mob before them.

*L. C. J.* Were there none of the Mob in the Street?

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*Mr. Bembridge.* I saw none nearer than where the Guards had drove them to.

*L. C. J.* You say you saw the Prisoner there; What was he doing?

*Mr. Bembridge.* Nothing at all.

*L. C. J.* Had he his Sword drawn?

*Mr. Bembridge.* No.

*L. C. J.* When the Gentleman came up single to him, and they talk'd, had he his Sword drawn?

*Mr. Bembridge.* No.

*L. C. J.* How long after that, before the other Gentleman came up?

*Mr. Bembridge.* Instantly.

*L. C. J.* When they came to him, what pass'd?

*Mr. Bembridge.* They struck at him.

*L. C. J.* What did he do?

*Mr. Bembridge.* I saw him do nothing, but retire back towards *Long-Acre*.

*Mr. Major.* Was any Resistance made by him to the Guards?

*Mr. Bembridge.* No.

*Then Henry Avery was sworn.*

*Mr. Darnell.* Pray give an Account what you know of the Prisoner, the First of *March* last; Where you saw him, and in what Condition he was?

*H. Avery.* I had been appraising some Goods for *Mr. Broad*, and after we had done, he ask'd us, Where we would go to make up the Inventory? Says I, To the *Cross-Keys* in *Covent-Garden*. When we had made our Inventory, *Mr. Broad* came in, and said, He wanted *Purchase*. He sent for him, and he came very drunk: Soon after, I was call'd out, and left them. All I know of him is, that he was very drunk: He came in a Coach.

*Then John Holloway was sworn.*

*Mr. Darnell.* Were you at the Tavern, when *Purchase* came in?

*J. Holloway.* I was one of the Appraisers; we went afterwards to the *Cross-Keys*, to make our Inventory.

*Mr. Darnell.* What Condition was he in?

*J. Holloway.* Very drunk.

*Mr. Darnell.* How long did he stay?

*J. Holloway.* He took part of a Quart of Wine.

*Mr. Darnell.* What Time was it?

*J. Holloway.* It was after Nine, when he came in; and I believe it was after Ten, when he went: We came all away together.

*L. C. J.* Where did you go?

*J. Holloway.* Home.

*L. C. J.* Where do you live?

*J. Holloway.* I live in *St. Ann's*.

*L. C. J.* Where does *Broad* live?

*J. Holloway.* He lives in *St. Clement's*.

*Then James Blanford was sworn.*

*Mr. Darnell.* Did you see *Purchase* that Night? And at what Time?

*J. Blanford.* About a Quarter after Eleven, I saw him come up *Drury-Lane*, towards the Fire, when the Guards were drawn up, and the Mob were gone.

*Mr. Darnell.* Were the Mob gone, when he came to the Fire?

*J. Blanford.* Yes; except some old Women and Children, that were not concern'd.

*Mr. Darnell.* Who was with him?



*J. Blanfield.* There was no body with him; but he came to the End of *Long-Acre*, and had not time to stand there long, till one spurr'd up to him, and then he seem'd to lift up his Hand; to keep off the Horse; and presently, another struck at him, but he retired towards *Long-Acre*; and I could see no more of him.

*Mr. Darnell.* Was his holding up his Hand, in your Opinion, any thing more than to defend himself from the Horse?

*J. Blanfield.* I believe he had no Design, but to defend himself from the Horse, and the Blow.

*Mr. Att. Gen.* You say there was no Mob when you was there?

*J. Blanfield.* No.

*Mr. Att. Gen.* Did you see his Sword drawn?

*J. Blanfield.* No: He lifted up his Hand; with his Sword in his Hand, but it was not drawn.

*Mr. Thomson.* What Time was this?

*J. Blanfield.* Between Eleven and Twelve o'Clock.

*Mr. Thomson.* How much after Eleven?

*J. Blanfield.* I believe, about a quarter, or half an Hour.

*Mr. Thomson.* You say, the Guards were there, but no Mob.

*J. Blanfield.* Yes, a few Women.

*Mr. Thomson.* What did the Guards do, if there was no Mob there?

*J. Blanfield.* They rode about to disperse the Women, and other People that were there.

*Mr. Thomson.* You say, they dispers'd the Women, and the other People there. What other People do you mean?

*J. Blanfield.* People that I suppose were staring on: The chief Mob were gone.

*Mr. Thomson.* When you saw *Purchase* there, there were some other People besides the Women; Was he not among those other People, as you call them?

*J. Blanfield.* He came up by himself, and no body with him.

*Mr. Thomson.* Did he stand in the Street alone? Or did he join those other People?

*J. Blanfield.* There were no others to join with him.

*Mr. Thomson.* This Man plainly contradicts himself.

*Then Thomas Street was sworn.*

*Mr. Major.* Did you see the Prisoner that Night the Mob was up?

*T. Street.* I am the Watchman that belong to that Part: I had gone my Round at Eleven, and coming into *Long-Acre*, I saw two or three Gentlemen riding after the Prisoner; I stepp'd over the way, to see what the Matter was, and I saw one cutting at him; and he went to save the Blow, but his Sword was not drawn, but he fell against a Bulk of a Door, at the End of *Red-Lion-Court*; so says one of the Gentlemen to me, Watchman, go and knock him down; so I ran after him, and overtook him: Who are you? says I; says he, *Street*, it is I, I am drunk; the Guards have abused me, and cut at me: And so seeing him drunk, I let him go.

*Mr. Major.* What Condition was he in?

*T. Street.* Very drunk, that he could neither stand nor go.

*Mr. Darnell.* Then you did not see any Reason to knock him down?

*T. Street.* No.

*Mr. Darnell.* And being a Housekeeper, you let him go.

*Mr. Major.* Was he heading the Mob?

*T. Street.* No; I saw a great many of the Mob bring a great deal of the Wood to the Fire, but almost all the Mob was gone before he appear'd.

*Mr. Att. Gen.* You say he was so drunk, he could neither stand nor go; and yet you say he went into *Red-Lion-Court*; How far is that from *Long-Acre*?

*T. Street.* A little way. He was very drunk.

*Mr. Att. Gen.* I find he was not so drunk, but he knew you.

*T. Street.* Yes; but he reel'd very much.

*Mr. Major.* What became of him afterwards?

*T. Street.* I don't know indeed.

*L. C. J.* Does he live within your Walk?

*T. Street.* Yes.

*L. C. J.* Why did you not see him home?

*T. Street.* I was a little short in that.

*L. C. J.* When you first had Notice of the Mob, what did you do?

*T. Street.* I got up, and went my Round, at Eleven o'Clock.

*L. C. J.* Your ordinary Rounds, as you used to do; but took no Notice of the Mob, did you?

*T. Street.* No.

*L. C. J.* Did you not go among them, to persuade them to go home, or complain to the Constable?

*T. Street.* There were Constables there present.

*L. C. J.* Did you see any among the Mob you knew?

*T. Street.* No, not one.

*Mr. Att. Gen.* You knew *Purchase*, did you not?

*T. Street.* Yes.

*Mr. Att. Gen.* And is he the only Man you knew there?

*T. Street.* Yes, to my Knowledge.

*Mr. Att. Gen.* Did you take up any body that Night?

*T. Street.* I assisted our Constable, who took up several.

*L. C. J.* What did you do with them?

*T. Street.* We carried Seven to the Watch-House.

*L. C. J.* What Time was that?

*T. Street.* About Two or Three o'Clock in the Morning.

*Then John Cheekly was sworn.*

*Mr. Major.* Did you see the Prisoner that Night the Mob was in *Drury-Lane*? And in what Condition was he?

*J. Cheekly.* My Lord, I had been at the *Fleece* Tavern, and going up *Drury-Lane*, near the *Castle* Tavern, I met a great many of the Mob: They said they had been pulling down a Meeting-House near *Long-Acre*, and presently I saw the Guards coming down very fast. When the Mob were dispersed, I saw the Prisoner coming, with his Sword on his Arm: Presently, an Officer rode up to him, and the Prisoner held up his Sword in the Scabbard, to keep off the Horse, and Blow from him. The Gentleman rode up to him again, and then the Prisoner did the same again. With that another rode up to him, and then he went off towards *Long-Acre*.

*Mr. Thomson.* What was he doing, that made the Captain ride up to him?

*J. Cheekly.*

*J. Cheekly.* He was standing in a reeling Posture, very drunk: When they drove him to the Bulk, it was as much as he could do, to keep himself up.

*Mr. Thomson.* But the Question is, What he did that made them ride up to him?

*J. Cheekly.* He did nothing at all.

*Mr. Thomson.* Did you not see him huzza, or flourish with his Sword?

*J. Cheekly.* No.

*Juryman.* What o'Clock was it then?

*J. Cheekly.* A few Minutes before I came there, I ask'd the Watchman, What o'Clock it was? And he told me, it was half an Hour past Eleven?

*L. C. J.* Where do you live?

*J. Cheekly.* In *Russel-Court*.

*L. C. J.* What are you?

*J. Cheekly.* I belong to the Sea; I have been in the Queen's Service.

*L. C. J.* What Ship do you belong to?

*J. Cheekly.* I was paid off last *October*, and am now waiting for Preferment. I have been a Volunteer, with the Queen's Letter, seven Years, and a Midship-man.

*Then Plaxton was sworn.*

*Mr. Darnell.* What do you know of the Prisoner at the Bar, that Night the Mob was? Was you sent for to him?

*Plaxton.* I was sent for out of my Bed, between Twelve and One, to let him blood: He was not very well: He had been abroad, and came home in Drink; and his Wife supposed he had had some Hurt, and sent to me, to bleed him, for fear of any Misfortune.

*Then John Brooks was sworn.*

*Mr. Darnell.* What do you know of the Prisoner that Night?

*J. Brooks.* My Lord, I know nothing of this Business; but I never knew any thing, but that he behaved himself very well, while I knew him.

*Mr. Darnell.* My Lord, we have a great many Witnesses to his Reputation, but we will not trouble your Lordship with them. We have done with our Evidence.

*Juryman.* My Lord, we desire to ask a Question or two of *Russel* and *Richardson*.

*Then Richard Russel was call'd again.*

*Juryman.* You was speaking of the Prisoner's coming down with his Sword flourishing, What time was that?

*Russel.* It was soon after we came to *Drury-Lane*.

*Juryman.* How soon was it after you came?

*Russel.* It was immediately: We had rode but once round the Fire, and he came as if he came from *Holborn-wards*.

*Juryman.* Was the Mob all gone away at that time?

*Russel.* No.

*Juryman.* How long was it before they were dispersed?

*Russel.* It was about a Quarter of an Hour.

*Juryman.* Can you judge what time it was?

*Russel.* It must be about Eleven, as near as I can guess.

*Mr. Att. Gen.* Are you sure he had his Sword drawn?

*Russel.* Yes; he flourish'd it, and made several Pushes at us.

*L. C. J.* When he came in this manner, were you marching? Or did you stand with your Horses drawn up to the Wall?

*Russel.* We were standing with our Horses drawn back to the Wall.

*Mr. Soll. Gen.* Which way did he come from?

*Russel.* He came the way from *St. Giles's*.

*Mr. Soll. Gen.* Then he came from towards *Holborn*. That clears it. The other time, when he came up the Lane, was after they were dispersed.

*L. C. J.* Were you between him and *Holborn*, or between him and the *Strand*?

*Russel.* He came from *St. Giles's*, and we were between him and the *Strand*.

*Mr. Thomson.* How long did you see him first, before the Mob were dispersed?

*Russel.* About a Quarter of an Hour.

*L. C. J.* You say you march'd round the Fire, and as you went of one Side of the Fire, they went of the other.

*Russel.* Yes, my Lord: And afterwards we were drawn up of one Side of the Fire, and the Guards of the other.

*L. C. J.* When they were quite dispersed, where did you march then?

*Russel.* To *St. Giles's*, and so to *Holborn*.

*Then George Richardson was call'd again.*

*L. C. J.* What time was it that he thrust at the Officer?

*Richardson.* It might be about Eleven o'Clock, but I can't tell positively.

*L. C. J.* How soon was it after you came to the Fire?

*Richardson.* It was presently after I came up.

*Mr. Att. Gen.* What Time did you come from *Whitehall*?

*Richardson.* Something past Ten; and we could not march fast, because we had the Foot before us.

*L. C. J.* Did you see him as soon as you came?

*Richardson.* No; there was a great Crowd of People; I rode among them, and as I came back, I saw him of the other Side: Captain *Hensbrough* spoke something to him, but what I know not; and then he made a Pass at the Captain, and I struck down his Point.

*Purchase.* I desire to know which Hand I had my Sword in?

*Richardson.* I can't tell that.

*Mr. Att. Gen.* Are you sure you saw his Sword drawn, and the Thrust made at the Captain?

*Richardson.* Yes, I am.

*Then Southerland was call'd again.*

*L. C. J.* Can you tell about what Time it was that he was flourishing his Sword?

*Southerland.* It was half an Hour after Ten, when we came from *Whitehall*; and, by the best Calculation I can make, it was about half an Hour after Eleven, when I saw him flourishing his Sword. I ask'd him, Are you encouraging the Mob? He answer'd me, Are you against *Sacheverel*? And then I lifted up my Hand at him.

*L. C. J.* Where was he then?

*Southerland.* This was above the Fire; and I saw him afterwards below the Fire. As I went to Captain *Horsley* for Orders, I cast my Eye to the Corner of *Long-Acre*, and there I saw him again, in the same Posture.

*L. C. J.*



*L. C. J.* Are you sure he had his Sword drawn in both Places?

*Southerland.* I am sure of it.

*L. C. J.* How long might it be between the two Times you met him?

*Southerland.* A very little Time.

*Purchase.* Which Hand was my Sword in?

*Southerland.* In your Left Hand.

*Mr. Thomson.* Was it immediately upon your coming into *Drury-Lane*, that you spoke to him?

*Southerland.* Not immediately upon our coming there.

*Mr. Thomson.* How long did you stay at that Fire, before you dispersed the Mob?

*Southerland.* It might be more than a Quarter of an Hour.

*Mr. Darnell.* We have done with our Evidence on both Sides. I beg Leave to make a few Observations upon the Evidence on Behalf of the Prisoner. We think, my Lord, though he is a Bailiff, (for there seems to be some Reflection cast upon him for that Reason) yet we doubt not, but he will have the same Justice done him here, as if he were a Man of the best Estate: For whatever is determin'd as to this Man, may be the Case of any other, who may happen into the like Circumstances; therefore I beg Leave to observe, how far any thing is proved against him, that may make him guilty of High Treason. We think we have given a full Answer to all the Presumption, that he was engaged in the original Intention of pulling down the Meeting-Houses, or that he was aiding in the Execution of that original Intention. We think the Evidence on both Sides agree in this, That the Prisoner was not concern'd in the original Intention; and that he was not with the Mob, that pursued *Dr. Sacheverel* to *Westminster*, and brought him back in Triumph, and then went to pull down the Meeting-Houses: But the only Thing that is proved against him is, that after they were pull'd down, and after they were burnt, when the Guards were come, and they were dispersing the Mob, then the Prisoner is so unfortunate to be found with his Sword drawn, hollowing, and asserting the Right of *Dr. Sacheverel*, and that he would stand by him, and encouraging the People to do so. This is the most of the Evidence that can be against him: Then the Question is, Whether this, singly, can make him Guilty of High Treason? For if his Part in the general Intention be out of the Case, as it must be if he came after the Fact was committed, then the Question will be, Whether a Man that comes in afterwards, by saying the worst he can say, shall make himself Guilty of High Treason?

My Lord, we hope the Evidence on Behalf of the Queen is reconcileable with the Evidence for the Prisoner; and that the Evidence for the Prisoner shall be believed, that he only defended himself against the Guards that rode up against him: For *Richardson* says, he did not see him when the Guards first came there; and that agrees with the Account that *Broad* gave; for he says, he heard the Guards were marching before they came out of the Tavern. *Blanfield* agrees with the Evidence that *Orrel* gave: Says he, The Mob were dispersed under the Eaves of the Houses. Says *Blanfield*, At the time the Guards struck him, there were People under the

Houses: But I don't look upon them to be the chief Mob, but only some Women and People looking on. And then the Question is not whether his Sword was drawn or not, but on what Occasion, and what his Design was in drawing it. Our Witnesses say, that when the Guards struck at him, he only held up his Hand to defend himself; and that might fright the Horse; and he being angry at it, spurred up and struck him. It is natural to think the Guards should ride up to those that were standing in the Street, and enquire who they were. I don't depend on the Circumstance of his being in Drink, that it is any Excuse; for then if a Man has such a Design as this, he may easily pretend himself to be in Drink, and he will give himself Drink enough to encourage himself to do so bold an Act: But the use we make of it is to shew, that he had not any Intention in this. He had drank himself too far for to have a Design of joining with any Party, or do any particular Thing. And my Lord *Coke*, in his *Pleas of the Crown*, where he is giving his Opinion what is levying War against the Queen, says, that the Act alone is not sufficient to convict the Party; but the Mind is to concur in it. It is not barely doing an Act that is sufficient to convict a Man; for he must do it with that Design. Indeed if a drunken Man stabs another, it is Murder; because Malice is supposed where such a Fact is done. But in Case of High Treason there must be an Intention proved in the Party that doth the Fact. If he was in that Condition at the time he came out of the Tavern, and did any thing by way of encouraging them, we hope it is not such an Evidence against him as will make him guilty of any Part of the Intention, if his Mind did not concur in it.

*Mr. Just. Tracy.* My Lord *Coke* says, in the Case of *Oldcastle*, where he was forced, and did the Fact *pro timore*; that such an Act could not make him guilty.

*Mr. Major.* My Lord, we hope the Evidence is not sufficient to induce the Jury to believe he was concerned in the general Intent to pull down the Meeting-Houses; there is no Proof offered that he had any Intention or Part in that Matter; nor does it appear that he was privy to it. We have shewn where he was till the time he was met by the Guards. As for what was done by him then, it will not be pretended that barely assaulting the Guards is levying War; but it must be construed to be an aiding and assisting those Persons in that Intent to pull down the Meeting-Houses. As for that, it don't appear he had any Part in it, but it was done before he came to them: Nay he could not be assisting to the Mob; for before he came to them, the Guards were come down, and the Mob were soon after dispersed. The first time that any Account is given of him is, when he came behind the Grenadiers. Now can it be supposed that any Man that intends to head the Mob would come among the Horses, and that singly? Whatever he said, his Cursing and Swearing that will not make him criminal in this Case: It appears to be a thing that was accidental and done on a sudden, and was the Effect of his Drink, and that which a Man that had no Intent of joining in the general Design might be guilty of.

Mr.

Mr. *Att. Gen.* May it please your Lordship, and Gentlemen of the Jury, we think that, notwithstanding any thing that has been said by the Witnesses, or insisted on by the Council, it is a plain Case that the Prisoner is guilty of the Crime laid to his Charge. They have called a great Number of Witnesses; and I believe their Intention in that is, that you should take them by Tale, and not by weighing the Evidence and the Force of it; for I will be bold to say, as to all the Witnesses that have been produced to prove him drunk, nothing which they have said as to that Point can make any Alteration in the Case. As to the Witnesses produced for the Queen, I don't find they pretend to say any thing in Diminution of the Credit of them; nor can they say that any one of them is likely to be biassed, or to be under a Mistake; only one of them that took him to be a Country Gentleman, when he proved to be a Bailiff. As Mr. *Darnell* says, God forbid that any one should have harder measure because he is a Bailiff, but that he should have the same Justice as any other Man: But I must say, It is an easy Mistake to take him for a Gentleman, when it appears by the Evidence, that one Bailiff can go to the Tavern in his Coach, and the other go from thence in his Chair. The Council for the Prisoner have insisted, that our Evidence don't maintain the Charge; for they say this Rising is not High Treason, if there were not a general Intent to pull down Meeting-Houses: And we don't bring it home, to make it appear that he was privy or consenting to this Design; but we desire they will consider, the first Witness gives an Account that a Resolution was taken on *Tuesday* to pull down *Burgess's* Meeting: By whom was that taken? It was by the Friends of *Sacheverel* that came hollowing with him. Who is it afterwards that pull them down? Those that hollow and cry out for High-Church and *Sacheverel*. What did the Prisoner say when he was among them? Damn them, he was for High-Church and *Sacheverel*; he would lose his Life in the Cause. It is certain these Meeting-Houses were pulled down, and that by those People thus assembled, and who cried out for *Sacheverel*, and were the Friends of *Sacheverel*, and declared they would oppose all that were Enemies to him; and this Man cried out as loud as any of them. But we don't take it that it is necessary to prove, that every Man that was concerned in this Matter was originally in the Consult and first Design; but the Evidence gives an Account, that he join'd with them, he assisted them. If drawing his Sword; if flourishing it, and calling out to them to resist the Guards, and pushing at the Officer of the Guards, is resisting, surely there is sufficient Proof against him. If a rebellious Number of People are got together, and a Man, that knows not of it at first, will join with them, and act with them, and that which they are doing is Treason, though he came in late of the Day, he must deserve the same Reward as those that came in early in the Day.

There is one Thing observable in this Case, that this Meeting-House was not so soon destroyed as Dr. *Burgess's*; for the Fire was almost out there, when the Waterman, who was convicted, hollow'd them to this Meeting; that it was burnt first, and then they came to this Fire, and that was much later. It appears he lives in the

Neighbourhood of this Meeting-House; for he says he can hear them into his House: Now a Man that had been in the Neighbourhood of such a Place, and had been a good Subject, if there had been a tumultuous Design to pull down part of his Neighbourhood, instead of joining with those People, he would have endeavour'd to have hinder'd them from doing Mischief; but instead of endeavouring to prevent it, you find he joins with them, he draws and flourishes his Sword, and acts in it more than any other Person I have had an account of. The other Witnesses are to give an Account where he was 'till Five in the Afternoon, and thence 'till Eight at Night; and afterwards he is sent for by Mr. *Broad*, and with him he stays 'till this Matter is transacted. The Places he has been at before, are the Ale-House, the Brandy-Shop, and the Tavern: Are not these the proper Places to prepare those that are to engage in these Sort of Things? For whenever People go on these Attempts, it is necessary to fortify themselves by strong Waters, and strong Liquors, as he did. The Witnesses that saw him there, and give an Account of him, some of them say, he only held up his Hand; others say, he had a Sword in his Hand, but it was not drawn, and he held it up only to save himself from the Assault of the Guards. Now the Account you have is, that the Guards struck with the Flats of their Swords, and you hear of no body kill'd, nor any great Harm done to any body; therefore it is not to be thought they should, without Provocation, fall upon this Man, and attack him. As to the Exactness of Time, there is little Weight to be laid on it, for the whole Transaction don't take up above the compass of two Hours. The Guards came out about half an Hour after Ten, and before Twelve the Mob was dispersed. But that which you will take into Consideration will be the Series of the Facts, and see how they stand. *Orrel* says, he saw the Prisoner with his Sword drawn, and flourishing it, and when the Guards came, he assaulted them in the Manner you have heard; and they have said nothing to impeach our Evidence; what they say makes it appear he was there, and thus acting among them.

Mr. *Soll. Gen.* My Lord, the Evidence given by the Prisoner, and the Defence made on his Behalf, is so far from giving any Answer to our Evidence, that it renders the Fact more probable than it was before: For they have proved, that he is a Man likely to be concern'd in such an Affair; that he had been drinking all Day, and fit to engage in such a Matter; and that he is troublesome in his Drink; which are Circumstances that shew the Inclination of the Man, and make it probable that he should engage in this Matter. The Facts we take to be High Treason. They say on the other Side, it is not so; because we must prove a general Intent to pull down all Meeting-Houses, and the pulling down a single one is not sufficient. I will not now dispute that Point with them; for that there was such an Intention appears most plainly, by what pass'd that Night, by the several Meeting-Houses that were pull'd down. It was a general Intention, or else they could not have gone through so many in so short a Time: And it is not necessary to prove any previous Consult, for the Act itself is Treason: Where the Intention is the Treason, there the Act must be proved, that shows it. So



it is in the Case of counterfeiting the Coin, no body will say there is any need to prove any Design: That there was such an Intention is plain; by what was committed; and any one that joins with such a Number of People who are committing Treason, is equally Guilty with them. If he knew nothing of it till he saw them, yet if he joins with them in an Action that is Treason, he will be equally Guilty with them. They say he had not his Sword drawn; that he was going home, and he only lifted up his Hand, with his Sword in his Scabbard, to defend himself. But that Evidence don't interfere with what is offer'd on Behalf of the Queen; or if it did, yet we think our Evidence is of greater Credit and Weight than what they offer: For they that encounter a Man who has his Sword drawn, can never be mistaken, but deserve more Credit than those that are only passing by, and have no Danger from, or Concern with him; but this is all consistent, for *Ruffel*, and those who say his Sword was drawn, say, he came from *St. Giles's* way; the others say, it was after the Mob was dispersed; and that he came up the Lane; and that he went off by *Long-Acre*, and they saw him no more. Now, since no body saw him home, he might go that way, and afterwards come down and join the Mob, in the Manner the Soldiers have told you, and then he might be driven off, and come some way round again, with his Sword in his Scabbard: And these must certainly be different Times, for those who speak of his Sword being drawn, say, it was when he came from *Holborn*; and they that say his Sword was in his Scabbard, say, it was when he came from the other way, and then there can be no Contradiction between the Evidence. And we take it, the Law is as plain as the Fact, and that it is High Treason.

Mr. *Thomson*. My Lord, I would state the Objection in the outmost Latitude; and yet, with Submission, the Facts proved on the Prisoner make him Guilty of High Treason. They have insisted, that there was no previous Intention in this Man, to pull down these Meeting-Houses; that at that time he was in Drink, and not capable to have any Intention of doing any particular Act whatever, and that to the aiding and assisting *Mens* must be *rea*; and that he came when the Meeting-House (the Materials of which made the Fire in *Drury-Lane*,) was pull'd down, and all was over, and so neither in the first Design, nor assisting at the Execution of it. This, my Lord, I take to be the Strength of their Objections. As to the previous Intention, that is not necessary to be proved, and has been so lately determin'd, that I need not trouble your Lordship to repeat any thing about it. If a Man joins in an Undertaking of this Kind, which was general, though he comes by Accident, it makes him a Principal in that Matter. Then they would make use of his Drunkenness, to excuse him from his assisting in the Design; they say, if he had not his Senses, he could have no Intention, even to aid or assist any Design. Those Gentlemen know very well, that Drunkenness is no Excuse for any Act whatever: If a Man does deprive himself of his Senses, and commits a Fact that would be a Crime in a Man not in Drink, it shall be construed to be his Act, as much as if he had his Senses. *Beverly's* Case, in the 4th Report, is exprefs in that Point. Then they say, the Meet-

ing-House was pull'd down before, and he came when all was over. My Lord, I appeal to the Memory of your Lordship, and the Jury, whether they are not mistaken in that Fact; for the Fire was burning when he came, and the Mob about it; they were then burning the Inside of that Meeting-House, which they had pull'd down; and if they had not been dispersed, in all probability would have gone on with their Design; and he was there when the Guards were endeavouring to disperse them, and prevent their going on to do further Mischief, and he opposed them. They say, there was no Resistance made by the Mob, they were quiet; but this Man did resist, he push'd at the Horses, and at the Men, if you will give Credit to the Witnesses; and he did as much as was in his Power, to animate and encourage the Mob to resist: By his Expressions, and his Actions, he endeavoured to hinder the dispersing of that Mob, who were executing a treasonable Design. That is the aiding and assisting of them, which is his Crime. Then they say, he was there accidentally, and fell in as he was going home quietly. I take that to be otherwise on the Evidence; for however he might be left by Mr. *Broad*, he was seen coming down from *St. Giles's*, whereas, his way home was the other way. We must submit it, my Lord, whether his aiding and assisting in this Manner, does not make him guilty of Treason, as well as those who were executing the traitorous Design.

L. C. J. Gentlemen of the Jury, *George Purchase* stands indicted, for that he, with a great Multitude of other Persons arm'd, did, the First of *March* last, levy open War against Her Majesty. The Evidence that has been given by the Queen's Council, tends to shew a Design to pull down the Meeting-Houses about this Town, and that Design executed on a great many of them: The Guards coming to disperse those that were so employ'd, and the Prisoner resisting the Guards, joining with the Mob, and assisting them. To prove this, they produce *Tolbo* to give an Account of a Discourse, rather beginning than finish'd, of a Design of pulling down Mr. *Burgefs's* Meeting-House; some were for pulling it down immediately, others were for deferring it till the Morrow, and others for letting it alone till the Trial was over: And as they were thus talking, he left them. He calls it a Resolution of pulling them down, because no body did oppose it, only differ'd about the Time, but he did not stay till they came to any fix'd Resolution. The next Witness is *Orrel*, who gives you a very particular History of this Action: He tells you, at *Leonard's* Coffee-House he had heard that they were pulling down Mr. *Burgefs's* Meeting-House; that he went into that Meeting-House twice or thrice, while they were pulling it down; that thence they went to *Fetter-Lane*; that they had almost finish'd the Work there; he found almost every thing there down, and they were carrying the Materials to *Holborn*, and burning them: Thence they went to *Lincoln's-Inn-Fields*, and there they found a Fire, where they were burning the Materials of Mr. *Burgefs's* Meeting-House. He tells you what Outcries there were there, and speaks of some that call'd them to *Drury-Lane*, and a Consult that was, Whether they should go thither, or to *Wild-Street*; that some that headed the Mob, swore they would have all the Meeting-Houses down, and call'd them

them along, and led them to *Drury-Lane*; that when he came there, he found them breaking down the Door of that Meeting-House. He tells you what pass'd there; that he went afterwards, and met the Guards, conducted them to *Drury-Lane*, and run before them; that the Horse were commanded to disperse the Mob; that he saw one with a Sword, that was sheltering himself under the Houses, and there he push'd at the Horses with his Sword. His Expression is; that he poked; he did not make a regular Pass; but poked at them; that several of them struck at him, and drove him from among them; that afterward he saw him stand at the End of *Long-Acre*; that he went to him, and perswaded him to go home, but he did not think fit to go home; but when the Guards came up, he resisted them: Says the Witness to him, Do you consider what you do in opposing the Guards? You, in Effect; oppose the Queen: What is his Answer? It was, Damn you, Are you against *Sacheverel*? Thereupon, he cries out, High-Church and *Sacheverel*! He would fight the Guards, and he would lose his Life in the Cause; with such like Expressions, which he repeated several times, and shews how resolute he was in the Matter. He tells you, that he resolutely made a full Pass at one of the Officers, as he was partly pass'd by him, pointing towards his Flank; and he apprehends he must have run him through, but that another Soldier struck down his Point; that then the Soldier struck at him; and the Witness apprehending it might produce more Blows; and that there might be firing, he thought fit to retire: That he went down the Street, and the Mob was forced by them that way, and he heard some of them declaring, We will be even with them to Morrow Night; for they dare not fire upon us. He gives you an Account of the Place where he first saw this Man, which was over-against the Pewterer's, at the Corner of *Queen-Street*, which is between *Long-Acre* and *St. Giles's*.

The next Witness is *Russel*, who is one of the Horse-Grenadiers, and one of the first Body that came into the Lane. He says, they were commanded to disperse the Mob, and to take Care to place themselves so against the Houses, that no body should come behind them, and that they should hinder any body from passing before them. That Direction was prudent and necessary; for if they had stood so, that the Mob might have come behind them, they would soon have had them off from their Horses. He tells you, that the Prisoner came down from towards *St. Giles's*, as they were drawn up in this Manner, with the Horses Tails to the Wall. He tells you, this Man did not think fit to pass before the Horses in the open Street, but had a Mind to get in behind the Horses, and did get past one of them, but the Witness's Horse being drawn back between two Bulks, he could go no further, and the Witness beat him out: That afterwards he came at the Head of the Mob, and flourish'd his Sword, and swore, Damn you, who are you for? Are you against *Sacheverel*? He takes Notice, that as they dispersed the Mob of one Side, they gather'd on the other for a while; and it was about a Quarter of an Hour before they had quite dispersed them.

The next is *Southerland*. He tells you, that he saw him several Times; that he drew up his Grenadiers at the End of *Queen-Street*, and he

commanded them to draw back, so that none might come behind them; that he saw the Prisoner flourishing his Sword, and held out the Point to him, but did not make a Pass; then he says, he lost him for a while, but afterwards, when the greatest Part were dispersed, he saw him standing over-against *Long-Acre*, with his Sword in his Hand, and told the Captain he had been troublesome to him before, and the Captain, thereupon, bid him cut him to Pieces, as his Expression was; that they rode up to him, but the Prisoner made his Escape into *Long-Acre*.

The next is *Richardson*: He is a Trooper in the Third Troop of Guards: He tells you, that he remembers the Prisoner, when he rode in the First Troop; and that he knew him abroad, and here. He gives an Account in what Manner they march'd; that at the Corner of the Street, Captain *Hensbrough* (whom he believes the Prisoner must know, because he was in the Guards at the same Time) spoke to him, but what he said the Witness don't know; but as he pass'd by him, the Prisoner thrust at him, and the Witness apprehending he intended to kill the Captain, he beat down the Point of his Sword, and struck at him with his Sword, but the Point hitting against the Pent-house, his Blade broke in Pieces. This is the Substance of the Evidence for the Queen, and, if there be no Answer made to it, proves him to be assisting this Mob, and opposing the Guards, and attempting to kill the Captain, and taking the best Advantage to do it, as he pass'd by him.

On the Prisoner's Side, they have produced several Witnesses, a great many in Number. They begin with him in the Morning, and give an Account; That in the Morning he came to *Sheer-Lane*, to execute a Writ, and about Twelve the Money was paid, and then they parted.

The next Witness is *Johnson*; he says, they parted at half an Hour after Eleven; so that these two differ in their Accounts about half an Hour; for one says they parted at Twelve, and the other says, at half an Hour after Eleven: This I take Notice of only to shew an Uncertainty as to the Time.

*Benjamin Holden* is the next; he says he went with the last Witness, and the Prisoner, to the *Savoy*; and they parted at Twelve, and met again at Two. One Use they make of this Evidence is to shew, that he was not in any Cabal that Day, for they shew how he employed his Time: But you will observe, there are two Hours, from Twelve till Two, which they give no Account of; though they pretend to shew where he was all the Day. This Witness says, they parted about Four or Five o'Clock, and then the Prisoner went to *Grove's Brandy-Shop*: *Lane* says, he drank at his Master's House till past Five, and then they went to the *Horse-Shoe Tavern*, and came back to the *Brandy-Shop* about Eight, and continued drinking there about an Hour.

The next Witness is *Dupper*, who keeps the Tavern; he says, they came to his House about Five or Six o'Clock, and went before Nine; and satisfies you, that during all that time they were in his House: *Roe* went home with him from *Grove's*. I should take Notice, that all these say he was drunk. She says, she got him home, but then he was sent for by Mr. *Broad*: He was much in Drink, and they got a Coach, and another went with him to see him there. *Loveday* says,



says, he was in Drink; and when it was proposed for him to go to Mr. *Broad*, some said, it was not fit for him to go, because he was in Drink; and this Witness went with him, to see him safe there. Mr. *Broad* tells you the Occasion of being at the Tavern; some Goods were taken in Execution, and as they were making an Inventory, a Warrant was brought to him against a Gentleman, and he sent to the Prisoner for his Assistance, but he was so drunk he did not think him fit for Business, and bid him go home again; which he would not do, unless he would give him a Pint of Wine. When they came away, he told Mr. *Broad*, it was a mobbish Night, and he would see him home, and fancied he was drunk, and would make him go into a Chair, and then the Prisoner went towards *Drury-Lane*, in order to go home.

The next is *Bembridge*; he says, he was at an Oil-Shop, at *Long-Acre* End; that about Eleven, the Guards dispersed the Mob; that afterwards the Prisoner stood at the End of *Long-Acre*, and an Officer rode up to him; that the Mob was then dispersed, and the Officer having spoke to him, some others struck at him, and forced him away; he saw no Sword at all that the Prisoner had. *Avery* says, he was with *Broad* when the Prisoner came in, and says he was drunk. *Holloway*, the Appraiser, says, the Prisoner was drunk, and that he went away with Mr. *Broad* and him; and tells you, it was after Ten when they parted. Then *Bratbwaite* tells you, he saw him, a quarter after Eleven, come up the Lane towards the Fire; that he came all alone; that one of the Guards spurr'd up to him, and some of them struck at him, but he did not strike at them, but seem'd to lift up his Hand to prevent the Horses from coming upon him. The Watchman tells you, it was a quarter after Eleven; that the Guards struck at him, but he got up the Court, and they sent the Watchman after him, to knock him down, but he knowing him, did not think fit to do it. *Cheekly* says, That at the *Castle Tavern* he met the Mob; and some of the Guards rode up to the Prisoner, but the Mob was gone a quarter of an Hour before; and says, that the Prisoner had no Sword. *Plaxton* only says, that he was sent for that Night, to let him Blood: And *Brooks* gives some Account of his Behaviour.

The Matter will be now for you to compare these two Evidences together; and to consider, first, whether those things are true which are sworn by the Queen's Witnesses, or whether they are answered by the Witnesses for the Prisoner; and then what Stress is to be laid upon his being in Drink: And as there is no Objection made to the Witnesses of either Side, you are to take what they have said to be true, abating the little Mistake a Man may fall into as to the Exactness of Time, and the like. As to what they would pretend, of his going straight home from the Tavern, you will observe there is time enough for him to have done all that he is charged with; for it all happened in a quarter of an Hour, or a little more. If he parted from the Tavern about Ten; from that time till a quarter or half an Hour after Eleven is time enough to do all that has been spoken of. I think there is little Stress to be laid upon the Time, because there is a Series of Facts: The first thing done by him,

before the Mob was dispersed, was his coming behind the Horses; and you will find the Reason for that Command of the Officer to let none come behind him: But he, as drunk as he was, knew there was no hurting the Guards, unless they could get behind them: He had been in the Guards himself; and you must consider what Design he had in getting behind them, when the Street was open for him to go in. But if he had a Design to get behind them, that the Mob might pull them off from their Horses, he acted very rationally, though he was drunk. That Fact was proved by *Orrel* and *Ruffel*. Another Fact was, when they were drawn up above the Fire near *Holborn*; he was then coming down from *St. Giles's*: So that this is plainly not the Time that the Witnesses speak of when he was coming up the Lane. Then this was only when the Horse-Grenadiers were there; and the other was when the Horse-Guards came, when they were drawn up below *Long-Acre*; and there they swear he made a Pass at Captain *Hensbrough*: And *Ruffel* tells you, that as he sheltered himself under the Houses, his Sword struck against the Penthouse, and broke to pieces. *Southerland* speaks of another time when he was at the Corner of *Long-Acre*; and then indeed he was doing nothing: And that is the time when he told the Captain that he had been troublesome to the Grenadiers; thereupon the Captain bid him go and cut him to pieces: He did go; and then the Prisoner made off: But this was when the Mob was in a great measure dispersed. Now when do his Witnesses speak of? They speak of a time when he came up the Lane. That surely is not the time that either of those Witnesses speak of: They say he stood quiet, and a Soldier rode up to him, and struck him. You will consider whether that was not the time that *Southerland* speaks of. So that you will consider whether the Evidence of both Sides is not reconcilable; whether after he parted from *Broad*, he might not join the Mob, come down from towards *St. Giles's*, get behind the Horse, and afterwards make a Pass at the Captain, and then be driven down with the Mob towards the lower End of the Street: If so, it was natural, when they were driven down the Lane, for them to go home; and as his home was up the Lane, he must come back alone. If you do believe he was guilty of resisting the Guards in this manner, when he was admonished what the Consequence was, and he, instead of making an Answer, only asks, Are you an Enemy to *Sacheverel*? and encourages the Mob to follow him; you are to consider how far this will make him guilty with the rest: For the Council for the Prisoner, though they object to the Evidence of what passed in the *Temple*, yet they agree this Tumult was a rebellious Tumult; and the Fact shews there was such a Design. Indeed they did not pull down all the Meeting-Houses; but the Reason was, because the Guards dispersed them. They admit therefore this was levying War in the Persons concerned in it; but they would excuse him, that he came late and very drunk, and did nothing, but was beat by the Guards; and that his Drunkenness disables him from having a Share in the Design; and therefore he can't be guilty. It is insisted, that it is necessary he should be engaged in the original Design: But there is no need of

of that; for that is the Earl of *Essex's* Case: It is there adjudged, that the Earl of *Southampton* was guilty of Treason, by joining the Earl of *Essex*, though he did not know of his Design. And those that dispersed upon the Queen's Proclamation, it is said they were entitled to the Queen's Grace; but it is not said they were not guilty of High Treason. In Felony there may be Accessaries, those that are concern'd in contriving the Felony, or afterwards in assisting the Person; but in High Treason all are Principals, and are guilty equally with those that are the Actors. If there is a Design to levy War, and it is not levied, those who were in the Design are guilty of Treason; and so those that act in it, though they were not in the original Design, are guilty. Say they, He was not at the pulling down any Meeting-House: It is true; but he was defending those that did. It is plain, by the Course they took, if they had not been dispersed, they would have pull'd them all down. It is not indeed accomplish'd; some of them are standing; but it is because they were dispersed. Now is not this aiding them, when he endeavours to kill the Captain of the Guards, who came to disperse them? And if he could have prevail'd to have baffled the Guards, they might have gone to the rest; and when they had pull'd them down, they might have pull'd down every Man's House they thought fit. My Lord *Coke's* Expression is made use of, That the Act don't make the Man guilty, unless the Mind be guilty; therefore they would infer, that he must be concerned in the Design originally. This is a great Fallacy; *Oldcastle* was at War against the King; several furnished him with Victuals and Drink, and it was found they did it merely for Fear of Death; but as soon as they could escape from him, they did; and thereupon they were adjudged not to be guilty of Treason. Now you may easily observe the Difference in this Case: If a Man be *non compos*, it excuses him from Felony, and all other Crimes. That Man can't be criminal that has not the Use of his Reason; but can that be applied to any one that is drunk? That Matter is stated in the same Case: He says, If a Man will make himself drunk, shall this voluntary, this criminal Incapacity of his Mind excuse him? No; he says it shall not. And it would be of dangerous Consequence if it should. Indeed, his being drunk might make him more forward than otherwise he would have been; but you see he had Sense enough to get between the Guards and the Wall, and to attack the Captain when he was pass'd by him. If he can't be criminal unless his Mind be so, I would ask, If he had killed the Captain, would it not have been Murder? If so, then if the Act be Treason, he would be guilty notwithstanding his Drunkenness. Therefore if you do believe he committed the Facts, there is no regard to be had to his Drunkenness. If the Witnesses don't contradict one another, but they may be reconciled, you need not then weigh which Side you most credit; but if you think they can't be reconciled, but that the Witnesses overthrow one another, then you must consider which of them is of most Weight; but if they can be reconciled, I think the Jury can go in considering Evidence: And where such a Construction can be put on it, it ought to stand.

Mr. *Justice Tracy*. As to the Matter of Law, I concur with my Lord Chief Justice.

Mr. *Baron Bury*. So do I.

Then the Jury withdrew; and being return'd, found a Special Verdict.

*A Copy of the Special Verdict in the Case of George Purchase, tried for High Treason, in levying War against the Queen, under Pretence of pulling down Meeting-Houses, 9 Annæ, 1710, as it was drawn up for the Consideration of all the Judges.*

*Midd. ff.* Memorand' qd ad Session' Dnæ Rnæ de Oier & Terminer tent' pro com' Midd' apud Westm' in com' præd' die Martis undecimo die Aprilis anno rni Dnæ nræ Annæ &c. nono coram &c. præsentat' existit qd Georgius Purchase nup' de paroch' Sci Clement' Dacor' in com' Midd' Lab' timorem Dei in corde suo non hens nec debm ligeanc' suæ ponderans sed instigatione diabolica motus & seductus cordialem dilectcon' & veram debit' & nralem obedienc' quas veri & fideles subdit' serenissimæ & illustrissimæ Principis Dnæ nræ Annæ Dei gra' Magn' Britanniae Franciæ & Hiberniæ Rnæ Fidei Defens' &c. erga ipam Dnam Rnam gererent & de jure gerere tenent' penitus subtrahens ac machinans ac totis viribus suis intendens pacem & coem tranquillitat' hujus Rni pturbare primo die Martii anno rni dcæ Dnæ Rnæ octavo apud præd' paroch' Sci Clement' Dacor' in com' præd' proditorie compassavit imaginat' fuit & intendebat guerram rebellion' & insurrecon' contra dcam Dnam Rnam infra hoc Regnum Magnæ Britanniae levare & suscitare Et ad easdem pdicon' imaginac'on' & intencon' suas præd' perimplend' & ad effem redigend' idm Georgius Purchase præd' primo die Martii anno octavo supdico vi & armis &c. apud poch' Sci Clement' Dacor' in com' præd' contra dcam Dnam Rnam veram & indubitat' Dnam suam cum multitudine gentium jur' præd' ignot' ad numerum quingent' pson' modo guerrino armat' & arraiat' videlt gladiis baculis & fustibus & al' armis tam offensivis qm defensivis illicite & pditorie adtunc & ibm assemblat' & congregat' guerram publicam contra dcam Dnam Rnam pditorie paravit ordinavit & levavit contra ligeanc' suæ debm contra pacem dcæ Dnæ Rnæ nunc coron' & dignitat' suas &c. Necnon contra form' Statut' in humoi casu edit' & provis' per quod præcept' est vic' com' præd' qd non omitt' &c. quin caperet præfat' Georgium Purchase si &c. ad respond' &c. Qd quidem indicament' præfat' justic' dcæ Dnæ Rnæ per lras paten' ipius Dnæ Rnæ sub magno Sigillo suo ut præfert' confect' postea scilt ad deliberacon' gaol' Dnæ Rnæ de Newgate tent' pro com' Midd' præd' apud le Justice-Hall in le Old Bailly in suburbiis civit' London' die Lunæ decimo septimo die Aprilis anno rni dcæ Dnæ Annæ Rnæ Magn' Britanniae &c. nono supdico coram Samuel' Garrard Bar' Major' civit' Lond' Thoma Parker mil' capital' justic' Dnæ Rnæ ad plita coram ipa Rna tenend' assign' Edro Ward mil' capital' baron' scii dcæ Dnæ Rnæ Robto Tracy ar' un' justic' dcæ Dnæ Rnæ de Banco Thoma Bury mil' un' baron' scii dcæ Dnæ Rnæ Rico Levett mil' un' baron' scii dcæ Dnæ Rnæ Rico Levett mil'



mil' Willo Withers mil' aldris civit' London' Rico Richardson ar' un' servien' ad legem ac al' focis suis justic' dcæ Dnæ Rnæ ad gaolam ipius Dnæ Rnæ de Newgate de prisonar' in eadem existen' deliband' assign' per manus suas propr' delibaver' hic in Cur' de Recordo in form' juris terminand' &c. Et superinde ad præd' deliberacon' gaol' dcæ Dnæ Rnæ de Newgate tent' pro com' præd' apud Justice-Hall præd' dco die Lunæ decimo septimo die Aprilis anno nono supdco coram præfat' justic' dcæ Dnæ Rnæ ult' noiat & al' focis præd' ven' præd' Georgius Purchase sub custod' Rici Hoare mil' & Thomæ Dunch mil' vic' com' præd' (in custod' cujus in gaola de Newgate præd' pantea ex causa præd' commiss' fuit) ad bar' hic duct' in propr' person' suâ qui committitur præfat' vic' &c. Et statim de alt' prodicon' præd' in indicament' præd' superius spificat ei superius impoit alloquit' qual' se velit inde acquietari idm Georgius Purchase dicit qd ipe non est inde culpabil' & inde de bono & malo ponit se super priam Ideo immediate ven' inde jur' coram præfat' justic' dcæ Dnæ Rnæ ult' noiat & al' focis suis hic &c. per quos &c. Et qui &c. ad recogn' &c. Et jur' juræ illius per præfat' vic' ad hoc impannellat' scilt Thomas Sutton Johes Furnes Johes Parsons Josephus Parsons Willus Hargrave Johes Meard Edrus Boswell Robtus Breakspear Ricus Beatnife Ricus Hazard Francus Higgins & Humfrus Newman exact' ven' qui ad veritat' de & sup' præmiss' præd' dicend' elect' triat' & jurat' dicunt super sacrm suu' qd primo die Martii anno regni Dnæ Annæ nunc Rnæ Magn' Britannia &c. octavo multitudo gentiu' & magnus concursus populi ad numeru' quingent' person' modo guerrino armat' & arraiat' videlt gladiis baculis & fustibus & aliis armis tam offensivis qm defensivis apud paroch' Sci Clement' Dacor' in com' Midd' illcite & proditorie assemblat' & congregat' fuit sub colore & prætextu diruend' & spoliand' domos vocat' *Meeting-Houses*, pro assemblacone protestan' subditor' Dnæ Rnæ dissentien' ab Ecclia Anglican' pro divin' cultu allocat' & approbat' scdm direccon' cujusdm Act' in Parlamento Dni Willi & Dnæ Mariæ nup' Regis & Reginæ Angl' &c. anno rni sui primo fact' intitlat' *An Act for exempting their Majesties Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws*; & cum intencon' ad easdm domos diruend' & spoliand' qdq; diverse humoi domus in vico vocat' *Fetter-Lane*, & in quodm loco vocat' *Lincoln's-Inn-Fields*, & aliis locis in com' Midd' per populu' sic ut præfert' assemblat' & congregat' spoliat' fuer' & subsellia Angce *Seats*, & rostra Angce *Pulpits*, & al' material' eisdm domibus spectan' dirut & in apertis locis infra com' præd' combust' & cum igne consumpt' fuer' populo ill' adtunc magnope exultante vociferante & acclamante Et jur' præd' ulterius dicunt sup' sacrm suum qd magna pars eardm personar' ad numeru' trecent' person' de concursu populi ill' qui sic ut præfert' prædcam domu' in præd' loco vocat' *Lincoln's-Inn-Fields* spoliaffent & material' inde combussiffent & cum igne consumpsiffent per quendam Daniel' Dammaree duct' abinde erga quendam vicu' vocat' *Drury-Lane*, in com' præd' progressi fuer' exultantes & clamantes qd ipsi oes humoi domos protestan' dissentien' ab Ecclia Anglican' pro assemblacon' in eisdm pro divino cultu sic ut

præfert' allocat' & approbat' diruerent & prosternerent qdq; in progression' sua præd' int' eos adtunc agitatur fuit qm domu' humoi domor' proxime diruerent & spoliarent aliquibus eor' adtunc focis suis proponen' prostracon' & spoliacon' cujusdm humoi domus in vico vocat' *Wild-Street* in com' præd' situat' existen' aliis vero eor' prostracon' & spoliacon' altius humoi domus situat' in vico præd' vocat' *Drury-Lane*, pro eo qd præd' domus situat' in vico præd' vocat' *Wild-Street*, pervilis & nullius valor' fuit & domus ill' situat' in vico præd' vocat' *Drury-Lane*, maxime estimabilior super quo inter eos agreeat' fuit qd ipsi dcam domu' situat' in vico præd' vocat' *Drury-Lane*, proxime diruerent & spoliarent & superinde ad vicu' ill' sub ductu præfat' Danielis Dammaree (eodm Daniele populu' ill' ad eundm insequendum adtunc maxime animante & incitante) progressi fuer' exultantes & clamantes *Huzza, High-Church and Sacheverel*; & declarantes qd ipsi oes domos protestan' dissentien' ab Ecclia Anglican' pro divino cultu sic ut præfert' allocat' diruerent & præd' domu' in vico præd' vocat' *Drury-Lane*, adtunc freger' & spoliaver' & subsellia rostrum & al' material' adinde spectan' in publico vico ibm adtunc protuler' ad comburend' & cum igne postea in eodm publico vico ac eodm modo quo cætera consumpser' Et jur' præd' ultius dicunt sup' sacrm suu' qd dum personæ præd' sic ut præfert' assemblat' & congregat' material' domus ill' in vico præd' vocat' *Drury-Lane*, comburebant idm Georgius Purchase in indicament' prædict' menconat' ibm advenit & populi ill' cum gladio suo extract' adtunc defendebat & ad material' domus ill' comburend' eos maxime animabat sed idm Georgius Purchase ante tempus ill' cu' populi præd' non fuit præsens & adtunc multu' potus fuit Et jur' præd' ultius dicunt sup' sacrm suu' præd' qd satellitibus Dnæ Rnæ per mandatu' ejusdm Dnæ Rnæ concursu' populi præd' dissipare & insurrecon' ill' suppressere in vic' præd' vocat' *Drury-Lane*, adtunc & ibm advenientibus idm Georgius Purchase populi ill' sic ut præfert' material' domus præd' ibm comburent' satellit' ill' repugnare adtunc & ibm incitabat & in & sup' capitan' satellitui' præd' cum gladio suo extract' insult' fecit & sepal' equos satellitui' ill' cum gladio suo præd' percussit & per quendam adtunc & ibm præsen' admonitus existens qd quicunq; satellit' Dnæ Rnæ repugnat person' etiam ipius Dnæ Rnæ repugnat adtunc & ibm respondendo dixit, *Are you an Enemy to Sacheverel?* Qdq; præd' Georgius Purchase anteivit Angce *advanced before populu'* præd' eundm Georgiu' insequen' contra satellit' præd' duxit vociferans & clamans his verbis sequen' videlt *I am for High-Church and Sacheverel; come on, Boys, I will lose my Life in the Cause, and will fight the best of 'em*. Et jur' præd' ultius dicunt sup' sacrm suu' præd' qd generalis exclamaco populi præd' ad oia separal' loca præd' dum separal' domos præd' sic ut præfert' spoliaver' & material' inde combusser' universalit' fuit *High-Church and Sacheverel*; sed utru' sup' tota matia præd' per jur' præd' in form' præd' compert' videbit' justic' & cur' hic qd prædict' Georgius Purchase culpabilis sit de alt' prodicon' præd' in indicament' præd' spificat modo & form' prout per indicament' ill' suppoit' necne jur' præd' penitus ignorant & inde petunt advisament' justic' & cur' hic Et si super tota matia

matia præd' per jur' præd' in form' præd' com-  
pert' videbit' justic' & cur' hic qd præd' Georgi-  
us Purchase est culpabilis de alt' prodicon' præd'  
in indicament' præd' spificat' modo & form' pro-  
ut per indicament' ill' suppoit' Tunc iidm jur'  
dicunt super sacrm suu' qd præd' Georgius Pur-  
chase est culpabilis de alt' prodicon' præd' in in-  
dicament' præd' spificat' modo & form' prout  
per indicament' præd' versus eu' suppoit' qdq;  
ipe tempore alt' prodicon' præd' null' huit bon'  
feu catalla terr' sive tenta ad notic' jur' præd'  
sed si super tota materia præd' per jur' præd' in  
form' præd' compert' videbit' justic' & cur' hic  
qd præd' Georgius Purchase non est culpabilis  
de alt' prodicon' præd' in indicament' præd' spif-  
icat' modo & form' prout per indicament' ill'  
versus eu' suppoit' Tunc iidm jur' dicunt super  
sacrm suu' qd præd' Georgius Purchase non est  
culpabilis de alt' prodicon' præd' in indicament'  
præd' spificat' modo & form' prout ipe idm  
Georgius pro se plitando allegavit nec se occone  
præd' unqm retraxit Et quia præfat' justic' &  
cur' hic de iudicio suo de & sup' præmiss' præd'  
reddend' nondu' advifat' Dies inde dat' est præ-  
fat' Georgio Purchase usq; prox' gaol' delibacon'  
de Newgate præd' pro com' Midd' præd' tenend'  
in gaola præd' sub custod' vic' com' præd' inter-  
im salvo custodiend' &c. de iudicio suo de & sup'  
præmiss' præd' audiend' Eo qd præfat' justic'  
& cur' hic inde nondu' &c.

**M***iddlesex*, to wit. Be it remembered, That at the Sessions of our Sovereign Lady the Queen, of Oyer and Terminer, holden for the County of *Middlesex*, at *Westminster*, in the County aforesaid, upon *Tuesday* the eleventh Day of *April*, in the ninth Year of the Reign of our said Sovereign Lady Queen *Anne*, &c. be fore, &c. it is presented, That *George Purchase*, late of the Parish of *St. Clement Danes*, in the County of *Middlesex*, Labourer, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, entirely withdrawing the cordial Love, and the true, due, and natural Obedience, which true and faithful Subjects of our most serene and illustrious Princess, our Sovereign Lady *Anne*, by the Grace of God, of *Great-Britain*, *France*, and *Ireland*, Queen, Defender of the Faith, &c. ought, and of Right are bound to bear towards her our said Sovereign Lady the Queen, and conspiring, and with all his Strength intending to disturb the Peace and common Tranquillity of this Kingdom, the first Day of *March*, in the eighth Year of the Reign of our said Lady the Queen, in the Parish of *St. Clement Danes* aforesaid, in the County aforesaid, did traiterously compass, imagine, and intend to levy and raise War, Rebellion, and Insurrection, against our said Lady the Queen, within this Kingdom of *Great-Britain*; and to compleat and effect his treasonable Imaginations and Intentions, he the said *George Purchase*, on the said first Day of *March*, in the eighth Year aforesaid, with Force and Arms, &c. in the said Parish of *St. Clement Danes*, in the County aforesaid, against our said Lady the Queen, his true and undoubted Sovereign, with a Multitude of People, to the said Jurors unknown, to the Number of Five Hundred Persons, armed and arrayed in a warlike Manner,

to wit, with Swords, Staffs, and Clubs, and other Weapons, as well offensive as defensive unlawfully and traiterously then and there assembled, and gathered together, did traiterously ordain, prepare, and levy open War against our said Lady the Queen, against the Duty of his Allegiance, against the Peace of our said Lady the Queen that now is, her Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Wherefore the Sheriff of the County aforesaid was commanded, that he should not omit, &c. but that he should take the aforesaid *George Purchase*, if, &c. to answer, &c. which said Indictment, the said Justices of our said Lady the Queen, appointed by the Letters Patent of our said Lady the Queen, under her Great Seal as aforesaid, afterwards, to wit, at the Goal-Delivery of our Lady the Queen, of *Newgate*, holden for the County of *Middlesex* aforesaid, at *Justice-Hall* in the *Old-Baily*, in the Suburbs of the City of *London*, on *Monday* the seventeenth Day of *April*, in the aforesaid ninth Year of the Reign of our said Lady *Anne*, Queen of *Great-Britain*, &c. before Sir *Samuel Garrard*, Baronet, Lord Mayor of the City of *London*, Sir *Thomas Parker*, Knight, Lord Chief Justice of our Lady the Queen, assigned to hold Pleas before the Queen herself, Sir *Edward Ward*, Knight, Lord Chief Baron of the Exchequer of our said Lady the Queen, *Robert Tracy*, Esquire, one of the Justices of the Bench of our said Lady the Queen, Sir *Thomas Bury*, Knight, one of the Barons of the Exchequer of our said Lady the Queen, Sir *Richard Levett*, Knight, Sir *William Wisbers*, Knight, Aldermen of the City of *London*, *Richard Richardson*, Esquire, one of the Serjeants at Law, and others their Companions Justices of our said Lady the Queen, assigned to deliver the Goal of our said Lady the Queen, of *Newgate*, of the Prisoners being in the same, did deliver here with their own proper Hands, in the Court of Record, in Form of Law, to be determined, &c. and thereupon, at the said Delivery of the Goal of our said Lady the Queen, of *Newgate*, holden for the said County, at *Justice-Hall* aforesaid, the said *Monday* the seventeenth Day of *April*, in the ninth Year aforesaid, before the said Justices of our said Lady the Queen last named, and others their Companions aforesaid, the said *George Purchase* came under the Custody of Sir *Richard Hoare*, Knight, and Sir *Thomas Dunch*, Knight, Sheriff of the County aforesaid, (to whose Custody, for the Cause aforesaid, he was before committed to the said Goal of *New-Gate*) being brought to the Bar here in his own proper Person, who is committed to the aforesaid Sheriff, &c. and immediately being asked concerning the High Treason aforesaid, in the said Indictment above specified, charged upon him as above, in what Manner he would acquit himself thereof, the said *George Purchase* saith, that he is not guilty thereof, and of the Good and Bad thereof putteth himself upon his Country: Therefore let a Jury immediately come before the said Justices of our said Lady the Queen last mentioned, and others their Companions here, &c. by whom, &c. and who, &c. to take Cognizance, &c. and the Jurors of that Jury by the said Sheriff for this Purpose impannelled, that is to say, *Thomas Sutton*, *John Furness*, *John Parsons*.



*Parsons, Joseph Parsons, William Hargrave, John Meard, Edward Boswell, Robert Breakspear, Richard Beatknife, Richard Hazzard, Francis Higgins, and Humphry Newman,* being called, appeared, who being chosen, tried, and sworn to speak the Truth of and upon the Premises aforesaid, upon their Oaths do say :

That upon the first Day of *March*, in the eighth Year of the Reign of our Lady *Anne*, Queen of Great-Britain, &c. that now is, a Multitude of Men, and a great Concourse of People, to the Number of Five Hundred Persons, armed and arrayed in a warlike Manner, to wit, with Swords, Staffs, Clubs, and other Arms, as well offensive as defensive, did unlawfully and traiterously assemble and meet together in the Parish of *St. Clement Danes*, in the County of *Middlesex*, under Colour and Pretence of pulling down and rifling the Houses called Meeting-Houses, allowed and approved for the assembling of the Protestant Subjects of our Lady the Queen, dissenting from the Church of *England*, to perform divine Worship, according to the Direction of an Act made in the Parliament of our Lord and Lady *William and Mary*, late King and Queen of *England*, &c. in the first Year of their Reign, entitled, *An Act for exempting their Majesties Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws*, and with Intent to pull down and rife the same Houses; and that several such Houses in a Street called *Fetter-Lane*, and in a certain Place called *Lincoln's-Inn-Fields*, and in other Places in the County of *Middlesex*, were rifled by the People so as aforesaid assembled and gather'd together; and that the Seats and Pulpits, and other Materials belonging to the said Houses, were pulled down, and burnt, and consumed with Fire, in open Places within the said County, the People there present greatly rejoicing, shouting, and hollowing: And the said Jurors, upon their Oaths, do further say, that a great Part of the said Persons, to the Number of Three Hundred Persons of that Concourse of People, who, as aforesaid, had rifled the said House, in the Place aforesaid, call'd *Lincoln's-Inn-Fields*, and had burnt and destroyed with Fire the Materials therein, being led from thence by one *Daniel Dammaree*, proceeded towards a certain Street, in the County aforesaid, called *Drury-Lane*, hollowing and crying out, that they would pull down and level with the Ground all the said Houses allowed and approved as aforesaid for the assembling of the Protestants dissenting from the Church of *England*, for divine Worship; and that in their March aforesaid, it was then debated among them, which House of the said Houses they should next pull down and rife, some of them, at that Time, proposing to their Fellows the pulling down, and rifling a certain House of that kind, situate and being in a Street, call'd *Wild-Street*, in the County aforesaid; but others advising the pulling down and rifling another House of that kind, situate in the Street aforesaid, called *Drury-Lane*, for this Reason, that the said House, situate in the Street aforesaid, called *Wild-Street*, was mean, and of no Value, and that House situate in the Street aforesaid, called *Drury-Lane*, was very considerable; whereupon, it was agreed between them, that they would next pull down and rife the said House, situate in the Street

aforesaid, called *Drury-Lane*; and thereupon they went to the said Street, being led by the said *Daniel Dammaree*, (the said *Daniel Dammaree* at that Time greatly exciting and encouraging the People to follow him) shouting, and crying, *Huzza! High-Church and Sacheverel*! and declaring that they would pull down all the Houses allowed, as aforesaid, to the Protestants dissenting from the Church of *England*, for religious Worship; and did then break and rife the said House, in the Street aforesaid, call'd *Drury-Lane*, and did then bring out the Seats, Pulpit, and other Materials thereto belonging, into the publick Street, there to be burnt, and afterwards did consume them with Fire in the same publick Street, and in the same Manner as the rest were consumed. And the Jurors aforesaid, upon their Oaths, further say, That whilst the said Persons, assembled and gathered together as aforesaid, did burn the Materials of that House in the Street aforesaid, called *Drury-Lane*, the said *George Purchase*, in the Indictment aforesaid mentioned, came there, and with his Sword drawn did then defend the said People, and did greatly encourage them to burn the Materials of the said House; but the said *George Purchase*, before that Time, was not present with the said People, and at that Time was much in Drink: And the said Jurors, upon their Oaths aforesaid, further say, That the Guards of our Sovereign Lady the Queen, then and there coming by the Command of our said Lady the Queen, to disperse the Concourse of People aforesaid, and to suppress that Insurrection in the said Street called *Drury-Lane*, the said *George Purchase* did then and there incite the People, then, as aforesaid, burning the Materials of the said House, to resist the said Guards, and did make an Assault in and upon the Captain of the said Guards, with his Sword drawn, and with his said Sword did strike several Horses of the said Guards, and being admonished by one then and there present, that whoever resisteth the Guards of our Lady the Queen, resisteth also the Person of our said Lady the Queen, he then and there, by way of Answer, said, *Are you an Enemy to Sacheverel?* And that the said *George Purchase* advanced before, the said People following, he the said *George* led them against the Guards aforesaid, hollowing, and crying out in the following Words, that is to say, *I am for High-Church and Sacheverel; Come on, Boys; I will lose my Life in the Cause, and will fight the best of them:* And the Jurors aforesaid, upon their said Oaths, do further say, That the general Cry of the People aforesaid, at all the several Places aforesaid, whilst they rifled the said several Houses, as is before set forth, and burnt the Materials of the same, was universally, *High-Church and Sacheverel*.

But whether, upon the whole Matter aforesaid, found by the said Jurors in Form aforesaid, it shall appear to the Justices, and the Court here, that the aforesaid *George Purchase* be guilty of the High Treason aforesaid, in the said Indictment specified, in Manner and Form as by the said Indictment is supposed, or not, the Jurors aforesaid are entirely ignorant, and therefore desire the Advice of the Justices, and of the Court here; and if, upon the whole Matter aforesaid, found by the said Jurors, in Form aforesaid, it shall appear to the Justices, and to the

the Court here, that the said *George Purchase* is Guilty of the High Treason aforesaid, in the said Indictment specified, in Manner and Form as by the said Indictment is supposed, then the said Jurors, upon their Oaths, do say, That the said *George Purchase* is Guilty of the High Treason aforesaid, in the said Indictment specified, in Manner and Form as by the said Indictment against him is supposed; and that he, at the Time of the High Treason aforesaid, had no Goods or Chattels, Lands or Tenements, to the Knowledge of the Jurors aforesaid; but if, upon the whole Matter aforesaid, found by the said Jurors in Form aforesaid, it shall appear to the Justices, and to the Court here, that the said *George Purchase* is not guilty of the High Treason aforesaid, in the Indictment aforesaid specified, in Manner and Form as by the said Indictment against him is supposed; then the said Jurors do say, upon their Oaths aforesaid, that he the said *George Purchase* is not guilty of the High Treason aforesaid, in the Indictment aforesaid specified, in Manner and Form as he the said *George Purchase*, for himself, by pleading, hath alledged; nor did he ever withdraw himself for the Occasion aforesaid: And because the said Justices, and this Court, are not yet advised of giving their Judgment of and upon the Premises, therefore a Day is given to the said *George Purchase*, to the next Goal-Delivery of *Newgate* aforesaid, for the County of *Middlesex* aforesaid, to be detained in the Goal aforesaid, under the Custody of the Sheriff aforesaid, in the mean Time, safely to be kept, &c. to hear their Judgment of and upon the Premises aforesaid, because the said Justices, and this Court, are not yet, &c.

*The following is the Argument of the Chief Justice, written with great Clearness of Style, and Strength of Reason.*

**A**S to *Dammaree* and others, who pull'd down or rifed Meeting-Houses, it is the unanimous Opinion of all the Judges, That they were guilty of High Treason; and the Species of that Treason is, the levying War against the Queen.

For, when a Multitude is assembled, and Force used, not for any private End or Revenge, but upon a Pretence which is publick and general, it has in all Ages been adjudged a levying War against the Crown, and High Treason.

Several Cases have been at several Times, in the Reigns of *Henry VIII.* Queen *Elizabeth*, King *Charles I.* and King *Charles II.* under the Consideration of the Judges; and particularly so, if a Multitude assembled with an Intent,

And actually with Force attempt,

To remove evil Counsellors,  
Surprize a Privy-Counsellor,  
Lay violent Hands on a Magistrate,  
Expulse Strangers,  
Alter Laws,  
Make Reformation,  
Set Price on Victuals,  
Inhance Salaries or Wages,  
Pull down Inclosures,

If the Design be general; } For a private  
and not only ——— } Revenge to redress a private  
Injury.

Break Prisons generally;  
Pull down Bawdy-Houses.

And in all these Cases the Persons concerned therein, though they had no ill Intention against the Person of the King, or Queen, have been held guilty of levying War against the King or Queen: For these Insurrections are of a publick Nature, and Invasions of the Royal Authority. And this Insurrection, with Intent to pull down Meeting-Houses tolerated by Law, is of a more publick Nature and Concern than many of those; and a higher Violation of the Publick Peace; and therefore is, in the Eye of the Law, Rebellion, and levying War against Her Majesty.

As to the particular Case of *Purchase*, the Prisoner at the Bar, three of the Judges, my Lord Chief Justice *Trevor*, my Brother *Powell*, and Brother *Price*, are of Opinion, That as this Verdict is found, he is not guilty of High Treason.

But all the rest of the Judges are of Opinion, That upon this Verdict he is guilty of High Treason.

For this Insurrection, with an Intent to pull down the Meeting-Houses, being High Treason, that is, being a Rebellion, and in the Eye of the Law, a levying War against Her Majesty;

It appears, that the Design of this Rebellion was to pull down and rife Meeting-Houses; that the Manner of executing that Design was by pulling down the Pulpits, Pews, and other Materials of the Meeting-Houses, and burning them with great Triumph in publick Places; and when they had burnt the Materials of one, then to go on to another.

It appears, that when *Purchase* came to the Persons engaged in this Design, they were still continued assembled upon the same Design; and though the pulling down of the Meeting-House in *Drury-Lane* were over, it only had the Preference of that in *Wild-Street*, their whole Work of pulling down Meeting-Houses was not over, the whole Design of this Rebellion was not yet accomplish'd, but they were proceeding in the Method in which they had begun, and were burning the Materials of this Meeting-House in *Drury-Lane*, and when that was done, they would be at Liberty to go on to another, and so on 'till all should be finished, and all the Meeting-Houses destroy'd: So that their Rebellion was then continuing.

*Purchase* comes up to them, joins them that were thus engaged in an Act of Rebellion; not only encourages them to burn the Pews and Pulpit, but draws his Sword in Defence of these Rebels, then, in the Eye of the Law, in War against their Queen: And when the Guards came, by Her Majesty's special Command, to disperse them, that is, to stop this Rebellion, and put an End to this War, he actually engages the Guards, makes a Pass at the Captain of the Guards, and pokes at other of their Horses; and so did all in his Power to keep this Rebellion on foot, in Opposition to Her Majesty's Forces: And when a Person joins himself to those engaged in Rebellion, and fights in Defence of them, while they are in the Act of Rebellion, this, we think, involves him in the Guilt of this Rebellion; and, by thus doing, he is one of those that wages War against the Queen.

It is not indeed found in express Words by the Verdict, that he aided and assisted these Rebels,

E e e e

but



but 'tis found in effect; for 'tis found that he defended them with his drawn Sword, and he fought against the Guards that were sent to disperse them: Nay, here is more found than Aid and Assistance implies; for a Man is properly said to be aiding and assisting those that make War, if he supply them with Arms, or Provisions, or otherwise contributes to their Assistance, though himself is at a Distance; but here, with Sword in Hand, he is found actually to attack the Guards, and so himself joins in making War, and is more properly an Actor, than an Aider or Assister.

It is not found in the Verdict, that he knew of the Intent to pull down Meeting-Houses, and we take it not to be necessary.

1. Here is Matter found, that carries a violent Presumption that he did know it.

The Notoriety of the pulling down the Meeting-Houses in so publick a Manner; his joining to such a tumultuous Assembly; his encouraging them to burn the Materials; his Eagerness in defending this Assembly; his using the Word, which appeared to be the Watch-Word at all the several Meeting-Houses, *High-Church and Sacheverel*, declaring himself to be for High-Church and *Sacheverel*, which, if it had no other Meaning, was yet the Cant Word of these Rebels; his taking upon him so far the Knowledge of the Cause, that he declared he would lose his Life for it; and using that as an Inducement, when he called on the People that were engaged in the Cause of pulling down Meeting-Houses, to follow

him against the Guards, seem very strongly to import his Knowledge.

2. We are of Opinion, That if a Man knowingly join with others in breaking the Peace, and actually fights the Guards in their Defence; if in that Breach of the Peace they were Rebels, he is so too, whether he knew them to be so or not.

In Rebellions it is frequent that few are let into the real Design, but yet all that join in it are guilty of the Rebellion.

It is not for a Man to fight for Persons actually in Rebellion, and say, He meant indeed to break the Peace, but did not design High Treason; he should have thought of that before he joined those he saw engaged in an unlawful Act; if he will knowingly break and contemn the Laws, he must be content to suffer the same Punishment with those he had joined in breaking them.

And this is no new Point; this was the Opinion of all the Judges of *England*, in the Case of the Earl of *Essex*, and Earl of *Southampton*, in Queen *Elizabeth's* Time, the Earl of *Essex* having a Design to remove some of the Counsellors from about the Queen, and marching with several armed Men for that Purpose: All the Judges held, That all that went with him out of his House, and so adhered to the Earl of *Essex*, who was guilty of High Treason, were themselves guilty of High Treason too, though they knew not his Intent.

*Purchase* received her Majesty's most gracious Pardon.

LIX. *The Trial of Edward Arnold, for Felony (in maliciously and wilfully shooting at and wounding the Right Honourable the Lord Onslow) at the Assizes held at Kingston upon Thames, in Surrey, March 20, 1723-4, before the Honourable Robert Tracy, Esq; one of his Majesty's Justices of the Court of Common Pleas. 10 Geor. I.*

*Rex versus Arnold.*

Edward Arnold brought to the Bar.

*Surrey ss.* JUR' pro Domino Rege sup' Sacrum suum presentant quod Edwardus Arnold nup' de Paroch' Sci Nicholai Guildford aliis Guldeford in Com' Surr' predict' post primum diem Junij Anno Dom' Millimo septingentesimo vicesimo tertio scilicet vicesimo octavo die Augusti anno Regni Domini nri Georgii Dei Gratia Magne Britanie Franc' & Hibernie Regis fidei Defensoris, &c. decimo vi & armis, &c. apud Paroch' Sci Nicholai Guildford aliis Guldeford predict' in Com' Surr' pred' in & sup' prehonorable Thomam Dominum Onslow Baron' Onslow de Onslow in Com' Salop & de Clandon in Com' Surrey in pace Dei & dicti Domini Regis adtunc

& ibidem existen' illice felonice voluntarie malitiose & ex malitia sua precogitat' insult' fecit et adtunc & ibidem Idm Edrus Arnold quoddam Tormentum Angce Gun valent quinq' solid' cum pulvere Bombardino Angce Gunpowder & plumbeis Globulis Angce Leaden Shot, adtunc & ibm' onerat' quod quidm' Tormentum ipse idm' Edrus in manibus suis adtunc & ibm' habuit & tenuit in contra ad & versus prefat' prehonorable Thomam Dominum Onslow (eodm' prehonorable Thoma Domino Onslow in alta Regia via apud Paroch' Sci Nicholai Guildford als Guldeford predict' in Com' Surr' predict' adtunc existen') adtunc & ibm' illice felonice voluntarie malitiose & ex malitia sua precogitat' disploxit et exoneravit Angce did shoot, pinde adtunc & ibm' dans eidm' Thome Domino Onslow in & sup' sinistrum humerum ipsius Thome

Thome Domini Onflow unum grave vulnus latitudinis Sex Pollicum & profunditat' Duorum Pollicum contra pacem dicti Domini Regis nunc Coron' & Dignitat' suas, &c. nec non contra formam Statut' in humoi casu edit' & provis.

*Clerk of Arraigns.* How say'st thou, *Edward Arnold*? Art thou Guilty of the Felony whereof thou standest indicted, or Not Guilty?

*Prisoner.* Not Guilty.

*Cler. of Arr. Culprit,* How wilt thou be tried?

*Prisoner.* By God and my Country.

*Cler. of Arr.* God send thee a good Deliverance.

*Cler. of Arr.* You *Edward Arnold*, the Prisoner at the Bar, hearken to what is said to you. Those good Men that are now call'd, and do here appear, are those that are to pass between our Sovereign Lord the King and you, upon your Life and Death; if therefore you will challenge them, or any of them, you must challenge them as they come to the Book to be sworn, before they are sworn.

*Then the Jury were sworn.*

*Cler. of Arr.* Count these.

*Cryer.* Are you all sworn, Gentlemen?

*Jury.* Yes.

*Cler. of Arr.* Make a Proclamation.

*Cryer.* O Yes; if any of you can inform my Lord the King's Justice, the King's Attorney, or Solicitor General, of any *Treason, Murder, Felony, or other Misdemeanor, committed by the Prisoner at the Bar*, come forth, and you shall be heard; for the Prisoner at the Bar now stands upon his Deliverance: And all Persons bound by Recognizance to prosecute the Prisoner, come forth and prosecute, or you'll forfeit your Recognizances.

*Cler. of Arr. Edward Arnold*, Hold up thy Hand. Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause; he stands indicted, &c. *ut supra*; upon which Indictment he hath been arraign'd, and pleaded Not Guilty; your Charge is to enquire whether he be Guilty of the Felony, whereof he stands indicted, or Not Guilty.

*Mr. Hungerford.* I only beg Leave to trouble your Lordship with one Word in this Business. Your Lordship hath been applied to by Petition, and an Affidavit thereto annex'd, in respect to the Man's Circumstances, that he may have a Solicitor by him to call his Witnesses only. I pray they may be read.

*Mr. Justice Tracy.* Read the Petition and Affidavit.

*Cryer.* To the Honourable *Robert Tracy*, Esq; &c. The humble Petition, &c.

*Mr. Hungerford.* My Lord, all that we desire is, that he may be by him, to tell and to assist him in calling for his Witnesses.

*Mr. Serjeant Cheskyre.* My Lord, I am commanded to attend this Service, as I have the Honour to be of the King's Council. And I apprehend nothing is expected from me of a Consent to a Thing of this Kind. Your Lordship is of Council for all the Prisoners, who by Law can have none, as this Man can't have any. This is a Design to forestall the Justice this Man is coming under, and to anticipate it. My Lord, if any thing appears in the Nature of this Man's

Defence and his Behaviour, your Lordship will take care that the Officer calls for what Evidence is proper. Nothing hath appear'd in this Man's Conduct, as I am informed: He hath been called to his Trial; he hath pleaded in the common Method as other People do; and the Man, to my Sight, seems as sensible as myself, or any Person in Court: Therefore, when nothing else will do, they must have Recourse to the Method of this Affidavit. What is this Affidavit? An Affidavit of two Brothers, That he now is, and hath been, &c. which is more to blacken the Prosecution than any thing else. If they thought him so, why hath he not been restrain'd, and a Commission of Lunacy taken out? There is no Pretence of that. As this Person is charged with so horrid a Fact, I cannot consent to this. I am sure your Lordship will make no new Precedent. And pardon me, my Lord, if I say your Lordship is of Council for the Prisoner; and 'till it doth appear that he is lunatick, your Lordship will make no new Precedent.

*Mr. Serjeant Whitaker.* My Lord, I am likewise of Council for the King; and I must needs say, in the little Experience I have had, I never saw any Thing of this Nature offer'd. I have been attending often on Indictments at the *Old-Baily*, and elsewhere, and sometimes when mad People came on to Trial, and have been really in that Condition that the Persons would fancy the Prisoner to be; but such an Attempt as this I never knew before. Your Lordship and the Court will, when a Man pleads Not Guilty, do Right, and inquire after this Matter: If there is any Pretence for Insanity, it is his Defence; but that the Council for the King should give it up, and yield that he is so, cannot be expected; for by agreeing to this Petition, we do.

It is very extraordinary to hear Council speaking 'till they are assigned; but as they have taken that Liberty, I don't blame them; every one is to do the best for his Client: But I hope, for Precedent Sake, and for Justice Sake, there shall not the least Countenance be given to this Matter; I take it we can't consent to it. By Law the Prisoner cannot have Council; therefore I hope this Petition shall be rejected.

*Mr. Serjeant Comyns.* I shall not trouble your Lordship; it is a Matter so new and surprizing, that I need not add to what hath been already said, but shall submit it to your Lordship.

*Mr. Marlb.* My Lord, I beg your Lordship will indulge me one Word in this Matter. The Attempt they make is to have a Lunatick assisted in his Trial. With Submission, I don't know any Assistance he is capable of; for if really a Lunatick, he is insensible, so as to receive no Assistance, supposing he committed the Fact.

As to calling his Witnesses to prove this Insanity, these very Brothers, if they stand in any Part of the Court, may equally call them, as well as if they had any Assistance of an Attorney or Solicitor to stand by him. I would not fling any Imputation on any Person; but if the Man hath a Design to act a mad Part, as the Design will appear, if he be really sensible, then he is capable of receiving the Instructions of the Agent, if he happens to be out, how to behave himself mad; so that no good, but a very bad Use may be made of it. As to the Consent, we can't do it. We think as to the Subject-Matter



Matter of the Petition, your Lordship can't grant it, from the Inconveniencies that may attend it.

Mr. *Hungerford*. I ———

Mr. Serjeant *Whitaker*. My Lord, we oppose his speaking.

Mr. *Hungerford*. I was going ———

Mr. Justice *Tracy*. It must not be.

Mr. *Hungerford*. My Lord, I know my Duty so well, that I submit. But I see your Lordship hath more Temper and Lenity. I believe it is indifferent what Part of the Court his Brothers are in, if his Solicitor stand by him. I know no other use to be made of it than to call his Witnesses.

Mr. Justice *Tracy*. I can't do it with any Consent. What my Brother says, the Law is clear in. It is my Duty to give him all the Assistance I can; and that I will do.

Mr. *Hungerford*. Let the Names be handed to somebody to call the Witnesses.

Mr. Serjeant *Cbesbyre*. We that are Council for the King will do nothing that is hard.

Mr. Serjeant *Whitaker*. No, I never will, while a Man's Life is at stake. None of us will do any thing that is hard.

Mr. Justice *Tracy*. I don't believe you will.

Mr. *Ballard*. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment at the Suit of the King, against *Edward Arnold*; and the Indictment sets forth, That *Edward Arnold*, late of the Parish of, &c.

To this Indictment he hath pleaded Not Guilty; if we call our Witnesses, and prove the Indictment, you will find him Guilty.

Mr. Serjeant *Cbesbyre*. May it please your Lordship, and you Gentlemen of the Jury, I am, in this Case, Council for the King. The Prisoner at the Bar, *Edward Arnold*, stands indicted upon an Act of Parliament 'of the last Session of Parliament; and, Gentlemen, it is for maliciously and wilfully shooting the Lord *Onslow*, and wounding him, as he apprehended, and as will appear from the Evidence, mortally. It pleased God to preserve him; but notwithstanding that, the Fact, by him committed, is Felony, without Benefit of Clergy.

And, Gentlemen, though we need nothing to justify a Law, made necessary from Instances in your own Neighbourhood, yet, give me leave to tell you, it is but reviving the old Law of *England*; for by that, if a Person did an Act to another, whereby Death might ensue, notwithstanding the Party did not die in a Year and a Day, it was Felony. We have Instances of this so early as *Edward the Second*, and *Edward the Third*; but I own, of later Years this hath been discontinued, and held an Offence punishable at Discretion, yet not punish'd with Death, till this Act I have mention'd, which is but only the old Law of *England*, revived: And if the Barbarity of People made it necessary, it became the Legislature to make it Felony, without Benefit of Clergy.

Gentlemen, the Fact this Person hath been guilty of, was committed in this Manner. On the twenty-eighth Day of *August* last, within less than three Months after passing the Act, as if the Fellow had studied, and been fond of being the first instance of Cruelty that should suffer by this Act, this noble Lord, mention'd in the

Indictment, and upon whose Life this Person had a deliberate Design, had been out with Gentlemen a hunting a Fox Chace: Upon his returning down a Lane in the King's Highway, as will appear by the Evidence, one Mr. *Flutter* was on my Lord's Left Hand, and Mr. *Fawks* almost on his Right, my Lord in the middle; Mr. *Flutter* then observing the Prisoner at the Bar coming up with his Gun cock'd, and the Muzzle towards him, ask'd him, What was the Meaning of his coming in that manner, with his Muzzle of his Gun, and his Gun cock'd? The Man makes no Answer, goes on a Pace or two, turns back, and takes Aim, and shoots at this noble Lord. The Blast being so near, it struck him off his Horse, wounded him in a cruel manner: It proved (it pleased God) not mortal, and that because he could not buy such Shot as he design'd. My Lord, it must naturally strike Horror to those about him, who had no Apprehensions of this kind, to find the noble Person thus shot. You will easily believe, they alighted to his Assistance, they got him to the Bank; he cry'd, The Villain hath kill'd me; as well he might: Some of the Company observing the Fellow, he went on his way thirty or forty Paces: They overtook him, and he resisted at first, but being brought to the noble Lord, whom he had thus wounded, he makes no Excuse; he seem'd to struggle, according to the Account I have in my Brief; he seem'd to be pale and livid, and to have great Rancour, and aim'd, with the Musket, to do that that the Shot had not done; but that, you may easily imagine, was prevented.

Gentlemen, one would wonder how a Thing of this kind could enter into his Head; but upon Inquiry, this cruel barbarous Man hath meditated on this in his Thought for some time; and now, after Facts are done, People are apt to make Discoveries, and they knew further than they knew before. One would be apt to enquire, What could be the Occasion of this? One would think this noble Lord had abused and injured this Man to the last degree; so far from that, that this noble Lord was unknown to the Man; the Man did not know him, but was forced to seek Opportunities to know this noble Lord, that he might seek this Revenge. It is not properly Revenge, because Revenge is a Return to an Injury, but here was no Injury done this Man by my Lord; my Lord did not know him, nor, for ought I know, the Man did not know my Lord. But how then came this about? According to the Tenour of his Confession, it arose from the most wicked Things. This noble Lord is known to you all, he hath always appear'd in the Service of his Country, an Assertor of the Liberties thereof, always endeavour'd to support the present Government, in the House of *Hanover*, and is for the Protestant Religion, against Rebels, and for suppressing Clubs, and Places of Meeting for People's wicked Enterprizes; and if that be a Fault, I hope it is a Fault most of you are guilty of, and will be guilty of; that you are for asserting the Liberties of your Country and your Religion, and for supporting the Crown; and if this Man is to be believed, the People had inspired him, brought him to a pitch of Enthusiasm, I don't know what to call it, that my Lord was an Enemy to his Country, and he thought he should do God and his Country

try good Service, by destroying him; Hence it is necessary to shew what Evidence we have to open to you, and tell you what Preparation (it comes out) that this Fellow made; and it is very proper, because that perfectly throws aside any of the Pretences whereby to throw a Dust in your Eyes, to extenuate the Crime, that he had acted like a Madman; he had a steady and resolute Design, and used all proper Means to effect it.

Gentlemen, though he acted like a wicked Man, void of Reason, you will have little Reason to think he acted like a Madman.

Every Man that so departs from Reason, every wicked Man may be said to be a Madman; but I hope that shall not skreen all that so act, and free and exempt them from Punishment.

My Lord, the Morning this happened he went to the House of one *Smith*, and had a quarter of a Pound of Powder, and a Pound of Shot; and the Person directed them to No. 2. and gave him that Shot which was a larger Sort than he used to have: And it seems he is a Marksman, as you will hear; it was always his Business to aim at the Head.

He had the Powder and the Shot; and that Morning he was met by one, who hearing him discharge his Gun, asked what he had been doing, what he had killed, as you will hear from one of the Witnesses: Says he, I only did it to discharge my Gun. Gentlemen, this is to shew that the Purpose was steady in him, and he would meet with no Disappointment, but that his Purpose might take Effect. You know, a Gun that hath been charged some time, and laid by, some Wet or Damp may happen to it to prevent its going off; in order to hinder that, he first discharges his Gun, and then loads it again; that he might be secure of its going off. And after he had thus prepared himself, the next thing was to be apprized which Way my Lord was gone, which Way the Dogs went: He was asked the Reason, Are you going a hunting? He falls out into a Rage, that my Lord *Onslow* was an Enemy to his Country; and if he could meet him, he would shoot him. Within a few Minutes afterwards this Noble Lord with his Company, as I have mentioned, came by. The Man being thus prepared, discharged his Gun, and executed his wicked Design. My Lord, this is the Nature of the Thing; and this coming to his Master's Ears, he could not but be concerned that those who appeared eminent and zealous in his Service should meet with such Treatment: Therefore his Majesty hath given Directions to have his own Servants appear in this Prosecution, to see that Right be done: And if we make out this to be the Fact, there is no need of Rhetorick or Flourish of Words to deceive you, nor I believe of any thing to work up your Passions, or to persuade you to do Right between the King and the Prisoner; which is all we desire.

Mr. Serjeant *Whitaker*. May it please your Lordship, and you Gentlemen of the Jury, I am Council in this Case for the King; and though we have the Honour to serve the King, yet we desire nothing but according to the calm Rules of Justice. If the Evidence satisfy you, that this Person, this Man, is guilty, then we expect you find him so; if it is not sufficient, nothing said

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by us should influence you to do an Injury: Therefore whether the Man is guilty, and a Proof of that is the Matter which is to be laid before you, we won't use any manner of Persuasion one way or other, but plainly lay the Fact before you.

Gentlemen, this Man is indicted upon an Act of Parliament passed the last Sessions; and this Act of Parliament every body thinks a necessary Act; and if so, it is a just and good Act; and if it be just and good, it is fit it should be put in Execution when it is transgressed. Gentlemen, I shall take up little more of your Time than only to state one or two Facts, which we shall farther lay before you.

When the Wound was given to this Noble Lord, there was some Discourse with him about it; and among the rest one Gentleman, you will observe, who was in Company, and riding by my Lord *Onslow*, asked him, How came it to pass he had not shot him? Sir, says he, you are an innocent Man. This we make use of for these two Purposes: The one to shew that he had particular Malice against my Lord *Onslow*; upon what Occasion hath been opened by my Brother, and I shall not repeat it: The other, to shew that this was done with great Deliberation, and done against this Noble Lord. Gentlemen, then farther, when it comes to be inquired of him afterwards, when he seemed to be cool, How came you to do this? and, It's Pity he should be guilty of such an Act; he says, Have no Concern for me; I must answer for it. Gentlemen, these things shew that he had no manner of Remorse, not the least. One would have thought, in case of Passion and Revenge, when People had vented their Malice, they would come to repent, and be concerned; but instead of that, it appears, by his Discourse afterwards, he had not the least Concern or Remorse.

Then as to his Preparation for this Fact, it had all the Deliberation in it as could be: He goes to a Shop where he used to buy his Powder and Shot; but they happen not to provide him with so large Shot as he expected; he at that time asked for the largest Shot; the Master of the House was not within, but the Mistress was; says she, Go and fetch No. 2. which proved not to be so large as he would have had. No. 2 is looked out for him, and he buys a quarter of a Pound of Powder and a Pound of this Shot.

This Evidence we shall give, and add to what hath been opened already; and then we shall leave it to your Consciences and your Judgments, whether we have not sufficiently proved the Charge in the Indictment; and if we have, we shall appeal to your Judgments, and to your Consciences, what Verdict to bring in.

Mr. Serjeant *Connors*. My Lord, we shall beg leave to call our Witnesses.

Mr. *Flutter* sworn.

Mr. Serj. *Chester*. Sir, will you tell my Lord and the Jury—Give an Account of what passed when this Fact was committed.

Mr. Justice *Tracy*. Bid the Prisoner come up.

King's Council. We desire he may.

(Brought up accordingly nearer to the Court.)

Mr. Justice *Tracy*. (To the Prisoner.) As all the Witnesses come, if you have any Question to ask, put it to me, and I will ask your Question for

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you;



you; I will give you all the Assistance that lies in my Power.

Mr. *Flutter*. As we were coming back from Hunting with my Lord *Onslow*, we came into a narrow Lane, a sandy Lane near *Guildford*; my Lord *Onslow* was on my right Hand, I was even with him; I saw a Man coming up towards us; this Man, the Prisoner; and I saw he had his Gun cocked; he met us.

Mr. Serj. *Cbesbyre*. Did you say any thing to him?

Mr. *Flutter*. When he came to my Horse's Head, his Countenance changed pale; then I asked him, why he carried his Gun in that manner: He made no Answer, but immediately turned short, and shot my Lord.

Mr. Serj. *Cbesbyre*. In what Place was it? What is the Name of the Place?

Mr. *Flutter*. I don't know the Name of the Lane; it is near *Katharine-Hill*.

Mr. Serj. *Cbesbyre*. In what Parish is it?

Mr. *Flutter*. St. *Nicholas's* Parish.

Mr. Serj. *Cbesbyre*. What was the Effect of his shooting?

Mr. *Flutter*. My Lord *Onslow* fell off his Horse on his Face; my Horse startled at the Gun going off; but as soon as I could turn him, and come up, I saw the Blood come; and I said, My Lord, I will go to *Guildford*, and get some Surgeons; and accordingly I went.

Mr. *Marsh*. What became of the Prisoner?

Mr. *Flutter*. He walked up the sandy Way; but I can't tell what became of him, because I was gone for the Surgeon.

Mr. Serj. *Cbesbyre*. *Arnold*, would you ask this Witness any Questions?

Mr. Justice *Tracy*. Put it to me; tell me what Question you would have asked, I will ask it.

Prisoner. I don't know. Ask him your self, if you have a mind to it. I don't know. I used to go that Way every Day. I am sorry for what is done; and I can't think how I came to take that Way.

Mr. Serj. *Cbesbyre*. The Devil worked with him, stood at his right Hand, and directed him.

Mr. *Parsons* sworn.

Mr. Serj. *Whitaker*. Mr. *Parsons*, pray give an Account of what happened on this 28th of *August*, as you was returning from Hunting with my Lord *Onslow*.

Mr. *Parsons*. We met the Prisoner at the Bar, *Edward Arnold*.

Mr. Serj. *Whitaker*. Was you near my Lord?

Mr. Serj. *Cbesbyre*. How did you ride?

Mr. *Parsons*. I was behind Mr. *Flutter*.

Mr. Serj. *Cbesbyre*. You were pretty near together?

Mr. *Parsons*. Yes, very near.

Mr. Serj. *Cbesbyre*. What did you observe?

Mr. *Parsons*. We met this Man coming up the Lane. I saw him present his Piece; he took Aim, and shot my Lord. My Lord fell off from his Horse.

Mr. Serj. *Cbesbyre*. What did you do?

Mr. *Parsons*. I went to see whether my Lord was dead; I saw he was not dead; and the Prisoner made off.

Mr. Serj. *Cbesbyre*. In what manner did the Prisoner make off? did he walk or run?

Mr. *Parsons*. He did not run. I rid after him, and rode him against the Bank: You Villain, said I, you have killed my Lord; you will be hanged for it: You won't hang me to day, will you? says he. No, not to day; but you will be hanged.

Mr. Serj. *Cbesbyre*. How was his Countenance?

Mr. *Parsons*. Very pale and confused.

Mr. Serj. *Cbesbyre*. Did he surrender himself to you, or make any Resistance?

Mr. *Parsons*. He told me, he would charge again: No, says I; you shan't: Then I called out to another Man to take him, one *Green*: When he came, I said, This Villain hath shot my Lord *Onslow*.

Mr. Justice *Tracy*. Did the Prisoner *Arnold* say he would charge again?

Mr. *Parsons*. He said he would charge again; but he could not; for he had no Time.

Mr. Serj. *Cbesbyre*. How far was the Prisoner got from the Place where he shot my Lord?

Mr. *Parsons*. About 30 Yards.

Mr. Serj. *Cbesbyre*. What did you do?

Mr. *Parsons*. I brought him back to my Lord.

Mr. Serj. *Cbesbyre*. What happened then when you brought him to my Lord?

Mr. *Parsons*. When I brought him in Sight of my Lord, says my Lord, You Villain, you have killed me.

Mr. Serj. *Cbesbyre*. What did he say?

Mr. *Parsons*. He said nothing.

Mr. Serj. *Cbesbyre*. Did he seem to struggle?

Mr. *Parsons*. He did seem to struggle, to strive to come at my Lord, as I thought.

Mr. Justice *Tracy*. What did you think?

Mr. *Parsons*. When he was brought by my Lord, he struggled, and seemed to strive to come at him. Says I, Mr. *Green*, take him away; for he is coming at my Lord again: I thought so.

Mr. Justice *Tracy*. Had he his Gun?

Mr. *Parsons*. His Gun was taken away from him.

Mr. *Marsh*. You say you rid behind Mr. *Flutter* and my Lord; what Distance was there between you and them?

Mr. *Parsons*. My Lord and Mr. *Flutter* rode abreast; I was behind I believe about two or three Yards.

Mr. *Marsh*. If I understand you right, you say you saw the Prisoner aim at my Lord; did you see him aim at my Lord *Onslow*?

Mr. *Parsons*. I see him aim at my Lord *Onslow*.

Mr. Serj. *Comyns*. In what manner did he seem to level? towards his Head, or how?

Mr. *Parsons*. I thought it was towards his Head.

Mr. Serj. *Comyns*. Where did he shoot him?

Mr. *Parsons*. In the left Shoulder.

Mr. Serj. *Cbesbyre*. Prisoner, will you ask this Witness any Question?

Prisoner. I don't know what to say to him.

Mr. *John Fawks* sworn.

Mr. Serj. *Cbesbyre*. Sir, will you tell my Lord and the Jury, while you was in Company and attending my Lord *Onslow* from Hunting, what happened when this tragical Fact was committed?

Mr. *Fawks*. My Lord, returning from Hunting with my Lord *Onslow*, coming down this Lane

Lane where this Accident happened; I espied Mr. *Arnold* at some Distance, before any of the rest did: I said to Mr. *Parsons*, Here is Mr. *Arnold* coming up the Lane; I will be hanged if he hath not a mind to shoot me. Mr. *Arnold* passed by my Lord with a stern Look upon him; I was in the Road; this Mr. *Flutter* was on the right Side of my Lord, and I was in the same Road with my Lord, behind him about four or five Yards. He passed my Lord *Onslow*, and comes up almost over-against me, rather beyond me; I see him look sternly on my Lord *Onslow* and on me; he had his Piece so as they commonly carry them when they shoot flying: He comes up with his Piece and shoots my Lord *Onslow* in his Shoulder: My Lord dropped by Degrees upon the Ground. I got off my Horse, and turned my Lord's Face from the Ground, for fear it should be scratched with the Dust, which was like Pounce or fine Sand: So I turned him as soon as I could; and drew him to the Bank: I laid down; and my Lord laid down upon me upon my Shoulder. I said, Take care of the Villain, seize the Villain; he hath killed my Lord: I cried out to seize him, as well to secure him, as for fear the Villain should turn and shoot again.

Mr. Justice *Tracy*. You say you saw him coming down the Lane.

Mr. *Fawks*. Yes, my Lord.

Mr. Justice *Tracy*. You say you followed my Lord *Onslow* in the same Tract.

Mr. *Fawks*. Yes, my Lord, I did.

Mr. Just. *Tracy*. How far was you from my Lord?

Mr. *Fawks*. I believe I might be in the same Tract about four or five Yards from him.

Mr. Justice *Tracy*. Then you was after my Lord?

Mr. *Fawks*. Yes.

Mr. Justice *Tracy*. My Lord must be between you and the Prisoner; how came you to take Notice of him?

Mr. *Fawks*. My Lord, this Prisoner rid away with my Horse a Week or Fortnight before. I called at my Taylor's; and put my Horse at the Door; in the mean Time I went in; and when I came to take my Horse again, my Horse was gone: So I run out in a Surprise; and seeing no body, a Man that was by told me, *Ned Arnold* hath rid away with your Horse. I coming out into the Street, could see into the middle of the Town; where I saw my Horse three or four Stones Throw off, and he walking him up the Town; I made haste—

Mr. Justice *Tracy*. I ask you, you say you saw him at a Distance, and you was behind my Lord.

Mr. *Fawks*. Yes, I was so.

Mr. Justice *Tracy*. Then consequently my Lord was between you and the Prisoner.

Mr. *Fawks*. Yes, the way we came.

Mr. Justice *Tracy*. You say my Lord was between you and the Prisoner; how could you distinguish the Prisoner from my Lord?

Mr. *Fawks*. Because he was in the Foot-way, and we were in the Horse-way.

Mr. Justice *Tracy*. He was in a different Tract.

Mr. *Fawks*. Yes, my Lord; he comes up the Foot-way, and the Way we were in was the Horse-way.

Mr. Serj. *Chefhyre*. As you was riding, could you perfectly distinguish the Man?

Mr. *Fawks*. Yes, I could.

Mr. Serj. *Comyns*. Pray one Word. Thus you say, when he had passed by Lord *Onslow* he turned back; what did he do at that time?

Mr. *Fawks*. He gives a Look upon my Lord; still kept on, and gave a Look, and went a little farther; then immediately turns round, and mounts his Gun; he had his Piece as usually Men have when they shoot flying; and before I could speak, my Lord *Onslow* dropped.

Mr. Serj. *Comyns*. When he mounted his Gun, did he take Aim or Level?

Mr. *Fawks*. Yes, he made a Level as if he would shoot at his Head.

Mr. Serj. *Comyns*. Which was nearest, you or my Lord?

Mr. *Fawks*. I, rather; I was nigher my Lord than he was.

Mr. Serj. *Chefhyre*. Prisoner, will you ask this Witness any Question?

Mr. Serj. *Comyns*. I desire to ask this Witness one other Question. Had you any Discourse with the Prisoner afterwards?

Mr. *Fawks*. Afterwards, Sir, when?

Mr. Serj. *Comyns*. After, when he was in Custody for this Fact,

Mr. *Fawks*. Yes; when I went to him in the *Marshalsea*, I did ask him, why he shot my Lord *Onslow*, and not me; because when he had rid away with my Horse, when I met him afterwards, Says I, Mr. *Arnold*, why did you do such a Thing as to take my Horse away? You don't know the Consequence of it; you are guilty of Felony. He said, I was a good Man; my Lord *Onslow* was not.

Mr. *Marsh*. I desire to ask one Question. You say you was behind my Lord riding in the same Tract, the same Way as my Lord was in; was that when the Prisoner passed by?

Mr. *Fawks*. He was in the Foot-path, and turned back.

Mr. *Marsh*. Did you then see him aim his Gun?

Mr. *Fawks*. I did. I can't say I saw him till he was passed; but he had his Gun as they commonly carry them when they shoot flying; and he presently mounted his Gun, and fired.

Soll. for the Prisoner. We beg Leave to know from the Witnesses for the King, whether this Prisoner was in Disguise.

Witnesses. No.

Soll. I beg Leave to ask them one other Question; Whether these Gentlemen that give Evidence for the King, whether they don't believe the Prisoner to be a Lunatick?

Mr. Justice *Tracy*. Will you ask this Man any Question?

Prisoner. I have nothing to say any more; I don't know what more Questions to ask.

Mr. Justice *Tracy*. Mr. *Fawks*, Whether did you take this Man to be a Lunatick?

Mr. *Fawks*. Most People that lived at *Guildford* have known him, that he was always a furly, morose temper'd Man: As to his being Lunatick, I know nothing of that; I am not a Judge of that.

Mr. *Parsons* and Mr. *Flutter* call'd again.

Mr. Serj. *Chefhyre*. How long have you known the Man?

Mr. *Parsons*. Twenty Years.

Mr. Serj. *Chefhyre*. Do you take him to be a Madman, or no?

Mr.



Mr. *Parsons*. No; I took him for a morose, ill-natured Man.

Mr. Serj. *Cbesbyre*. What is his Behaviour?

Mr. *Parsons*. He is a fullen sort of a Man, a dogged Fellow.

Mr. Serj. *Whitaker*. How did he use to live?

Mr. *Parsons*. I don't know; he had a House.

Mr. Serj. *Whitaker*. How did he live?

Mr. *Parsons*. He used to go a Fishing, and a Shooting.

Mr. Serj. *Whitaker*. Did ever any Body restrain him from the Use of a Gun, as being a Madman?

Mr. *Parsons*. I never heard they did.

*Prisoner*. I have had my Gun go off several Times in my Hand; but never, 'till now, had this Accident.

Mr. Serj. *Cbesbyre*. He never before shot a Lord in the Shoulder. He can ask better Questions when he holds up his Head; but if his Guilt makes him hold it down, I can't help it.

Mr. Serj. *Whitaker*. Mr. *Fawks*, since they have asked about his Sanity, we will ask one Question about what he said when he was in the *Marshalsea*, relating to this Fact. Had you any Discourse with him then?

Mr. *Fawks*. I told you, when I spoke to him of the Fact in the *Marshalsea*, I ask'd him, Why he shot my Lord *Onslow*, and not me, when I had told him of running away with my Horse? He said, that I was a good Man, and my Lord *Onslow* was not.

Mary Smith sworn.

Mr. Serj. *Comyns*. Will you go on, and shew the Preparation that was made for this Fact?

Mr. Serj. *Whitaker*. *Smith*, Do you know the Prisoner at the Bar?

Mrs. *Smith*. Yes, I do know him.

Mr. Serj. *Whitaker*. How long have you known him?

Mrs. *Smith*. I have known him several Years.

Mr. Serj. *Cbesbyre*. Do you remember, that in *August* last—and tell us when he came to your Shop? And for what Purpose?

Mrs. *Smith*. I was ironing; my Daughter was at one End of the Table, my Face was next the Door, my Door stood open; and Mr. *Arnold* comes in, and said, Mrs. *Smith*, I want a quarter of a Pound of Powder, and a Pound of Shot; I told my Daughter to serve him; my Daughter served him; and as it is usual to ask what Size, my Daughter ask'd him, What Size? Mr. *Arnold* ask'd, For the biggest you have; and so my Daughter took the Key, and went to the Drawer where the Shot was: Mother, says she, there is none of the biggest Shot in the Drawer; says I, Serve such Sort as there is; and my Daughter served the second Size; and when she had served him, he took up the quarter of a Pound of Powder, and the Shot, and laid down Five-pence, and said, There is your Money.

Mr. Serj. *Cbesbyre*. When was this?

Mrs. *Smith*. The Day that my Lord *Onslow* was shot. I believe it was about an Hour after that, People came running up by my Door: I ask'd my Daughter the Meaning of that Noise; my Daughter said, My Lord *Onslow* is shot.

Mr. Serj. *Cbesbyre*. Had you sold him Shot before?

Mrs. *Smith*. Yes; he was a pretty good Customer.

Mr. Serj. *Cbesbyre*. For how long?

Mrs. *Smith*. I can't tell how many Winters; I believe, two or three Years.

Mr. Serj. *Cbesbyre*. Did you look upon him to be a Madman, and furnish him with Powder and Shot?

Mrs. *Smith*. He used to ask for half a Pound of Powder, and three Pound of Shot, and laid down a Shilling for it; which was the Price I sold it for.

Mr. Serj. *Cbesbyre*. Did you, at any of these Times, for the Space of three Years you have furnish'd him, take him to be a Madman?

Mrs. *Smith*. No.

Mr. Serj. *Cbesbyre*. Would you have done this, if you had look'd upon him to be mad?

Mrs. *Smith*. No; I look'd upon him as sensible as any Customer I had.

Mr. Serj. *Cbesbyre*. All that Time?

Mrs. *Smith*. Yes; all that Time.

Mr. Serj. *Cbesbyre*. And the last Time?

Mrs. *Smith*. Yes; the last Time.

Mr. Serj. *Comyns*. At the Time when he came last, in what manner did he describe the Shot?

Mrs. *Smith*. When he came to the Door, at first he ask'd for a quarter of a Pound of Powder, and a Pound of Shot; and, as is usual, I ask'd him, What Size? And he said, The biggest Size.

Mr. Serj. *Comyns*. Doth he use to buy the biggest Size?

Mrs. *Smith*. He never had any of the biggest Size before.

Mr. Serj. *Comyns*. He never had any of that big Sort before; Did he ever use to come for a Pound of Shot? You say, He usually came for three Pounds.

Mrs. *Smith*. He usually came for three Pounds.

Mr. Serj. *Comyns*. When he paid for it, how did he pay for it?

Mrs. *Smith*. He paid Five-pence in Half-pence.

Mr. Serj. *Comyns*. Had he the Change ready?

Mrs. *Smith*. It was ready changed.

Mr. Serj. *Comyns*. Five-pence changed; Is that the common Price?

Mrs. *Smith*. Yes; Three-pence the Powder, and Two-pence the Shot.

Mr. Serj. *Comyns*. Is that the Price of the biggest Sort?

Mrs. *Smith*. Yes.

Mr. Serj. *Comyns*. But he had never any of the biggest before?

Mrs. *Smith*. No.

Mr. Serj. *Comyns*. He says it was Rabbit Shot.

Mr. Serj. *Cbesbyre*. I believe it was, because he could get no bigger.

Mr. Justice *Tracy*. (To the Prisoner.) Will you ask that Witness any Question?

*The Prisoner made no Answer.*

*Mr. Flutter call'd again.*

Mr. Serj. *Cbesbyre*. Sir, since you have been here, it hath been desired you might be ask'd, Whether the Prisoner is a Madman? You have known him some Time before this.

Mr. *Flutter*. I never was in his Company.

Mr. Serj. *Cbesbyre*. But you have known him; You have known there was such a Person.

Mr. *Flutter*. Yes.

Mr. Serj. *Cbesbyre*. Did you ever see, or hear that he was reputed a Madman?

Mr. *Flutter*. I never had any Conversation with him, but as other People have said.

Mr. Serj. *Cbesbyre*. Since this Accident?

Mr. *Flutter*. Ay, since this Accident.

Mr. Justice *Tracy*. Do you live near him?

Mr. *Flutter*. I live at *Guildford*, within a quarter of a Mile of him.

Mr. Serj. *Cbesbyre*. Did you hear, before this Time, that he was reputed a Madman?

Mr. *Flutter*. I have heard he would do odd Things, but I never heard that he was a Madman. I know nothing of that; I never heard it.

William Smith sworn.

Mr. Serj. *Whitaker*. Pray give an Account; Whether you see the Prisoner at the Bar the Day this Accident happen'd?

W. *Smith*. And please you, my Lord.

Mr. Serj. *Cbesbyre*. This is the Son of the Witness, Mrs. *Smith*.

*Smith*. And please you, my Lord, I was waiting for my Lord *Onslow*'s coming, to go a Fox-hunting; it was between Five and Six in the Morning: Accordingly, I staid till past Six; the Hounds came, and my Lord did not come: I was going up to *Katharine-Hill*.

Mr. Serj. *Cbesbyre*. The Place where this was done?

*Smith*. Yes. I was to go there to meet my Father. Going along the upper *Baron-Field*, I met Mr. *Arnold*; says I, Good Morrow, and says he, Good Morrow; this was in the Morning about Seven o'Clock.

Mr. Serj. *Cbesbyre*. Had you any Conversation with him?

*Smith*. And please you, my Lord, I will tell you. I met the Prisoner, and I says to him, Good Morrow; Good Morrow, says he; says he, Is my Lord *Onslow* gone a Fox-hunting? Yes, says I, the Hounds are come, but my Lord is not come. He ask'd me, Whether my Lord was come? I said, He was not, but the Hounds were, and they were to stay at Mr. *Searle*'s till my Lord came. Says he, What, don't you go a Fox-hunting? No, I said, I must go to Farmer *Dent*'s; I must go there to help to unload Coal upon the Hill: I went up the Hill.

Mr. Serj. *Cbesbyre*. Had you any further Discourse with him?

*Smith*. Only these three or four Words.

Mr. Serj. *Cbesbyre*. You bid him the Time of the Day, and he ask'd for my Lord *Onslow*?

*Smith*. Yes.

Mr. Serj. *Cbesbyre*. Had he his Gun?

*Smith*. No, he had no Gun; he had only his Hand-Basket upon his Arm, coming to *Guildford*.

Mr. Serj. *Cbesbyre*. At that Time; you have known him some Time?

*Smith*. Yes; these ten Years.

Mr. Serj. *Cbesbyre*. By his Behaviour that Morning, or at any other Time, did you look on him to be distracted?

*Smith*. No; I never did. I have been out a Fishing with him; and sometimes he would talk very well, and sometimes he would not give me a Word.

Mr. Serj. *Cbesbyre*. Did he behave himself a Fishing as other People do, that understood the Art?

*Smith*. He was more clumsy at it, and would have strong Tackle.

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Mr. Serj. *Cbesbyre*. Some are more Artists than others.

Mr. Serj. *Whitaker*. How was he for Fowling?

*Smith*. For Fowling, I can't say as to that.

Mr. Serj. *Whitaker*. You have known him carry his Gun?

*Smith*. Yes, frequently: I have been out, and met him with his Gun frequently, in the Summer Time, when the Rabbits were out.

Mr. Serj. *Cbesbyre*. What, he is a notable Marksman at the Head of a Rabbit?

*Smith*. I can't say nothing to that.

Mr. Serj. *Cbesbyre*. (To the Prisoner.) Will you ask him any Question?

Prisoner. I do not know what to say to it.

Mr. Serj. *Cbesbyre*. If you will tell me any Question, I will ask him for you.

Prisoner. If you please, I don't know what to ask him.

John Sturt sworn.

Mr. Serj. *Cbesbyre*. Pray, will you tell my Lord and the Jury, whether you saw the Prisoner at the Bar, that Day my Lord *Onslow* was shot?

*Sturt*. Before he shot my Lord *Onslow*, he call'd at my House, and ask'd, if my Lord's Hounds were out a Hunting? I told him, I did not know; with that he stood humming and talking to himself, swearing and cursing, and damn'd my Lord *Onslow* several Times; and stood so for near a quarter of an Hour.

Mr. *Marsh*. Did you ask him any Reason, why he did so?

*Sturt*. Yes, I did, but he would give me no Answer, not a Word.

Mr. Serj. *Cbesbyre*. Do you remember you heard a Gun go off?

*Sturt*. Not till he shot my Lord *Onslow*; not before.

Mr. *Marsh*. Did you ever hear him say any thing, by way of threatening?

*Sturt*. He swore and curs'd: Says he, God damn him, if I see him, I will shoot my Lord *Onslow*.

Mr. *Marsh*. How long was this before?

*Sturt*. About a quarter of an Hour.

Mr. *Marsh*. How far was your House off where my Lord was shot?

*Sturt*. Not above two Stones Throw.

Mr. *Marsh*. How long have you known this Man?

*Sturt*. From a Child.

Mr. *Marsh*. Have you known him carry a Gun?

*Sturt*. Yes, several Times.

Mr. *Marsh*. At this Time, or any Time before, did you take him for a Madman?

*Sturt*. He never talk'd much Sense; he talk'd to himself: He would sit and rave to himself.

Prisoner. I never was guilty of Swearing.

*Sturt*. He ask'd me for a Mug of Beer: No, says I, you have had too much already.

Mr. Serj. *Cbesbyre*. Did you take him to be in Drink?

*Sturt*. Yes, I did.

Solicitor for the Prisoner. We desire that this Person may be ask'd, whether he did not believe the Prisoner to be a Madman, and void of Reason?

Mr. Justice *Tracy*. What do you say to that Question? Did you not take him to be a distracted Man, a Madman?

G g g g

*Sturt*.



*Sturt.* I did not take him for a sober Man; I thought he was not right in his Senses, he took to Swearing so much.

*Mr. Serj. Chesbryre.* Did you take that to proceed from Drunkenness, or from Lunacy?

*Sturt.* I don't know; he hath sat and swore to himself several Times: He would talk strange Things.

*Solicitor.* We desire to know what those strange Things were?

*Mr. Justice Tracy.* Do you know what those strange Things were?

*Sturt.* I have heard him swear; he would talk inwardly to himself, that I could not distinguish.

*Mr. Justice Tracy.* Did you ever know him do any Hurt?

*Sturt.* No.

*Solicitor.* We desire to know whether this Man hath not often declared, he thought him to be a Madman?

*Sturt.* We did not take him to be in his right Senses: He was very often so, a great many of the Neighbours know it.

*Mr. Justice Tracy.* (*To the Prisoner.*) Would you ask him any Question?

John White sworn.

*Mr. Serj. Whitaker.* Sir, look upon the Prisoner, and tell us, Whether you see him that Morning my Lord Onslow was shot?

*White.* Yes, I did.

*Mr. Serj. Whitaker.* Whether you see him with a Gun, and what he said?

*White.* I was at a House, which is call'd ——— at the *Hope and Anchor*, at *Katbarine-Hill*, and while I was drinking a Pint of Beer, I heard a Gun go off; some Time afterwards, this *Edward Arnold* comes in, with his Gun in his Hand: Being acquainted with him, I took hold of him by the Coat, to look under it, and ask'd him, If he had shot a Rabbit? He said, No: Nor a Bird? No: What, did you shoot nothing? No, it was only to discharge my Gun.

*Mr. Serj. Whitaker.* What Time was this?

*White.* Upwards of Nine o'Clock; near half an Hour, as high as I can guess, before my Lord Onslow was shot.

*Mr. Serj. Whitaker.* The Reason he gave was, it was to discharge his Gun?

*White.* Yes.

*Mr. Serj. Whitaker.* Do you know any thing further, as to a new Charge?

*White.* No; he went out at one Door, and I at another.

*Mr. Serj. Chesbryre.* Did he use to carry Rabbits under his Coat, conceal'd? Because you look'd there?

*White.* I had a mind to know if he had shot a Rabbit.

*Mr. Serj. Chesbryre.* Did he carry a Gun formerly?

*White.* Yes, in his youthful Days, when his Father was living.

*Mr. Serj. Chesbryre.* Did he not use frequently to carry a Gun?

*White.* No, not frequently.

*Mr. Serj. Chesbryre.* When did you see him before with a Gun? Have you seen him within a Year?

*White.* I can't positively answer, whether I have, or no; I believe I have.

*Mr. Serj. Chesbryre.* Did you ever take him for a Madman?

*White.* No; I did not take him for a Madman, or a wise Man, nor a Fool; he was cunning enough in his Dealings.

*Mr. Serj. Chesbryre.* What Observations have you made as to that?

*White.* When I did any Work for him, I was as much troubled to get my Money, he was so near.

*Mr. Serj. Whitaker.* Near? What do you mean?

*White.* Without you made a Bargain with him, he was a hard Man to deal with; but he would pay honestly, and justly.

*Mr. Serj. Chesbryre.* When you said a hard Bargain, I suppose, by that you mean, he would pay as little as he could, and have as much as he could for his Money.

*White.* Yes.

*Mr. Justice Tracy.* You talk of him, as a Man that had Dealings, What Business did he follow?

*White.* No, my Lord, it was only for his Apparel.

*Mr. Justice Tracy.* You are his Taylor?

*White.* Yes, my Lord.

*Mr. Serj. Chesbryre.* Have you heard him say any thing of my Lord Onslow?

*White.* No, not lately.

*Mr. Serj. Chesbryre.* When did you? You are upon your Oath, therefore pray recollect yourself.

*Mr. Serj. Whitaker.* How long before this shooting at my Lord Onslow, was it, that you had any Discourse with him about my Lord Onslow?

*White.* It was some Time before; but to say justly how long, I can't: I happen'd to be in his Company: I took him to be amiss; whether he was in Drink, or no, I can't tell. He ask'd me, If I knew my Lord Onslow? I told him, Yes. He ask'd me, What sort of a Man he was? I said, Doubtless, a very good Man. He ask'd me, If my Lady was a good Woman? Yes, certainly, a very good Woman, I never heard the contrary. Whether he was in Liquor or no, I can't say: Says he, turning himself about, Why doth she not cut his Throat?

*Mr. Serj. Whitaker.* Repeat the Words in the manner he said.

*White.* He spoke, as his Speech is low, and the like; after that he had ask'd me these Questions, he made a Hum, Why don't she cut his Throat?

*Mr. Serj. Comyns.* Did he give any Reason why he said so?

*White.* No, I left him; and I said, God mend you. I went away, and left him.

*Mr. Serj. Whitaker.* The Morning you see him, what Temper was he in? How did he appear to be that Morning he shot my Lord Onslow?

*White.* He seem'd to be in as sedate a Temper as ever I saw him in my Life.

*Mr. Serj. Whitaker.* I desire another Question; Did you ask the Reason of his discharging his Gun?

*White.* What, about charging again? Nothing further pass'd: He drank his Beer, and went out at one Door, and I at another.

*Mr. Serj. Whitaker.* You had no Talk of a fresh Charge?

*White.*

*White.* No, I don't remember we had any.

*Mr. Marsh.* You say you got hold of him, thinking he had shot a Rabbit, Whether you did not do that, because he went after that Game?

*White.* His Father kept Grounds where were a great many Rabbits, and he used to use it then.

*Mr. Serj. Comyns.* Had you any Discourse with him, after his shooting my Lord *Onslow*?

*White.* I did, in Good-will, call to see him in the *Marshalsea*.

*Mr. Serj. Comyns.* What pass'd then?

*White.* I ask'd him how he did, and he ask'd me the same; and he ask'd me what People said: Says I, I am sorry for it, but the Vogue of the People of our Town is, that you will be hang'd, and your Friends are in great Grief for you; and if that be the Case, I advise you to get good Books, and repent; and he answer'd, He did not desire that any body should be concern'd for him.

*Mr. Serj. Chesbrey.* Did he talk rationally?

*White.* As at other Times: We drank a Mug of Ale together, and so we parted.

*Mr. Marsh.* Had you any Talk about my Lord *Onslow* being dead?

*Mr. Serj. Chesbrey.* At any other Time, whilst he was in the Prison at *Guildford*, in the House of Correction?

*White.* I had like to have forgot; I did go to him one Time, when he was in the House of Correction, and I told him, my Lord *Onslow* was dead, and he said, If he was dead, he could not help it; and said no more.

*Mr. Allen sworn.*

*Mr. Serj. Chesbrey.* I think, Sir, you have the Honour of acting in the Commission of the Peace?

*Mr. Allen.* I have the Trouble of it, I don't think it any Honour.

*Mr. Serj. Chesbrey.* Pray tell my Lord and the Jury, what you know of this Matter.

*Mr. Allen.* My Lord, I live at *Guildford*, and hearing of this sad Accident, I went down to the House of Correction, and examined him, and I found him in a very fullen Mood, and I could get nothing out of him for a long Time, and he could not look me in the Face: With a great deal of Difficulty and Perswasion, at last he express'd himself thus. I don't trouble my Lord *Onslow*, why do you trouble me? And he had been pretty much teized and baited by the People, exclaiming against him, and coming into the Prison to see such a Monster. I thought the next Day, after he had slept upon it, he might be in better Temper, so I left him then, and went again the next Day, but I did not find him so; for he run on with abundance of Vehemence against my Lord *Onslow*, and that he was the Author of all the Tumults, Disturbances, and Confusions, and wicked Devices, that had happen'd in the Country. I ask'd him, What was the Reason of his Animosity? And if any Person had given him any Occasion to say so? He said, No, but he was a very ill Man; and repeated the same, That he was the Author of all the Confusions, Tumults, and Noise, and wicked Devices; that he had over a hundred Times, he was very fond of those Words, *wicked Devices*. In the Course of his Examination, I took a great deal of Pains several Times; I put the same

Question several ways, to see if he would be brought to answer, and he would be silent. What surprized me, he all of a sudden starts up, and looks me in the Face, says he, Where is the King? The King, said I, What have you to do with the King? Says he, The King is in Fault, as well as my Lord *Onslow*. The King, What doth the Man mean? He answer'd me as regularly, and as fast as I put the Question. Says he, He put my Lord *Onslow* upon doing and making these Disturbances in the Country, or he suffers him to do it. Says I, Have you seen the King? Yes, says he, I have seen him once. Somebody came in and said, he had been at *London*, to see the King: Says I, Did you go to *London*, to speak to the King? Yes, I did go to see if I could come at the King, to see if he could not mend the Matter; and several Times he started up, and said, Where is the King? Is the King come home? And he said, When he came to *London*, he was gone abroad; and so they told him, he was still abroad.

*Solicitor for the Prisoner.* My Lord, we desire to ask this Gentleman this Question; Whether after this Examination of him, which he took at the House of Correction, he did not declare he believed him to be a Madman, and out of his Senses?

*Mr. Allen.* Some Time after this, I met his Sisters, very worthy Gentlewomen.

*Mr. Serj. Chesbrey.* Whose Sisters?

*Mr. Allen.* The Sisters of the Prisoner *Edward Arnold*. As to the Question, Whether I have not several Times said, I look'd upon him to be a Madman? —

*Solicitor.* Whether you did not declare, after you took his Examination, that you believed Mr. *Arnold* to be a Lunatick, or a Madman?

*Mr. Allen.* I remember, some Days after I had examined him, I met with two of his Sisters, Gentlewomen of very good Reputation. They knew me first, and told me who they were: I being short-sighted, could not so soon recollect them, and in the Night-time; and they represented to me, how miserably affected they were with this sad Accident, and I said, To be sure, it is very deplorable. They reply'd, To be sure, my Brother is mad; without he had been mad, he would not have done so: Why, says I, that is the best Turn you can give to it. His Behaviour is very extravagant, that I did say; so it was, to be sure: What could I have said? Would you have had me told the Ladies what a Rogue they had for their Brother?

*Mr. Serj. Chesbrey.* Did you know him before?

*Mr. Allen.* No, I did not.

*Solicitor.* My Lord, he doth not answer the Question; he doth not say, whether he did not declare, that he believed him to be a Madman.

*Mr. Allen.* I never did, as I remember. In my Opinion, he was very much out of the common way of Men, in the whole Course of his Life, and his Proceeding, as far as I could gather from his own Behaviour, and the Course of his Examination: But that I said he was a Madman, I can't remember.

*Solicitor.* If you please, Sir, one Word more: Whether the Prisoner, at the Time that he was in the Prison, did not desire Mr. *Allen* to shoot him through the Head? And whether Mr. *Allen* did not declare the same?

*Mr. Allen.*



Mr. *Allen*. He said he was willing to die, Why would not my Lord *Onslow* shoot him, or give him a Gun, and he would shoot himself? I am willing to die; for I am not willing to bring my Friend into Trouble.

Mr. Serj. *Cbesbyre*. Pray tell the Occasion of his saying, he would not bring his Friend into Trouble.

Mr. *Allen*. The Occasion that drew him into that, I had a Notion, that somebody must set him to work, the Act appear'd so unprovoked, and premeditated. When I examined as to that Circumstance, especially when he said, My Lord was the Author of those Tumults and Disturbances, I ask'd him, What Disturbances? He said, At the last Election; and wherever he went, People still damn'd and curs'd my Lord *Onslow*. Says I, Did you ever mention any thing of this Design? He told me, He had long, and deliberately intended to murder my Lord *Onslow*.

Mr. Serj. *Cbesbyre*. How long?

Mr. *Allen*. Ever since last Horse-Race was Twelve-month; and he had communicated such his Intention to his Friends, and they had encouraged him in it.

Mr. Serj. *Cbesbyre*. Did he name any body?

Mr. *Allen*. He did name two Persons to me.

Mr. Serj. *Cbesbyre*. We desire they may be nam'd.

Mr. Justice *Tracy*. What Persons did he name?

Mr. *Allen*. He named them as Persons that he had communicated his Intention of murdering my Lord *Onslow*; and they approved of it.

Soll. My Lord, if I am rightly instructed, these very Persons he had named, they are Friends of my Lord *Onslow*. Our Defence is Lunacy; and if he declared Persons that are Friends of my Lord *Onslow*, it is an Argument for us; and that is the only Reason why we desire Mr. *Allen* to answer to your Question.

Mr. *Allen*. As soon as ever he named the two Persons, says I, There are several Persons in the Town of the same Name; but who were his Advisers?

Mr. Justice *Tracy*. You don't say that he said they were his Advisers.

Mr. *Allen*. No, not his Advisers; they approved of it, and encouraged him in it; and when he found me solicitous to fix who those Persons were, as I thought it behoved me to be, he would have recalled his Words; says he, Do you think I will bring my Friends into Trouble? No; I am willing to die; why don't they kill me? why don't my Lord *Onslow* kill me? why don't he let me have a Gun to kill myself by? Says he, I won't bring my Friends into Trouble.

Mr. Serj. *Cbesbyre*. After he had named the Persons, and you pursued the Inquiry, then he drew in his Words?

Mr. *Allen*. Yes, after he had named them; but he would not bring his Friends into Trouble.

(After some Dispute about naming or not naming)

Mr. Serj. *Cbesbyre*. Then I ask you, and desire you'll declare upon your Oath, Were those Persons that were so named by the Prisoner remarkable Friends, and in the Interest of my Lord *Onslow*, or opposed him in his Interest?

Mr. *Allen*. They very remarkably opposed him, and were ever understood to be bitter Enemies to my Lord *Onslow*.

Soll. for the Prisoner. My Lord, I desire to know of this Gentleman, Whether Mr. *Arnold* did not desire him to shoot him through the Brains, or Words to that Purpose?

Mr. *Allen*. No, my Lord; I don't remember those Words: His Words I remember, for I reduced them into Writing. I would have taken it by way of Confession; but he was so stubborn, that I suppose if I had offered to produce Pen, Ink and Paper, and take the Words from his Mouth, he would not have said one Word: But in a few Days I reduced them into Writing; and I do remember very well he said he would shoot himself; Why don't my Lord *Onslow* shoot me? Let me have a Gun, that I may shoot myself: But I don't remember Brains to be mentioned.

Soll. We desire, my Lord, to know, whether all the Persons named were Friends or Enemies to my Lord *Onslow*?

Mr. *Allen*. He named but two to me.

Mr. Serj. *Cbesbyre*. My Lord, we have gone through the King's Evidence; and we reserve what is our Duty to reply, if there be any Occasion: At present we rest it here.

Mr. Justice *Tracy*. Prisoner, you know what is doing; you are upon your Trial for your Life; the Council for the King have gone through their Evidence; have offered all that they think material against you; you have heard all that hath been offered against you: Now it comes to your turn to make your Defence; What say you for yourself?

Prisoner. With humble Submission, I don't know what to say. May God forgive; if it is my Fault, I am sorry for it. I don't know what to say more.

Mr. Justice *Tracy*. What have you said? Repeat what you said.

Prisoner. With all Submission to your Lordship, I don't know what to say. I ask Pardon for all my Offences and Faults.

Mr. Justice *Tracy*. How came you to attempt this?

Prisoner. I don't know how it happened.

Mr. Justice *Tracy*. And what was the Cause? It don't appear that this Noble Lord ever did you the least Injury. Call your Witnesses for the Prisoner.

Soll. for the Prisoner. *Nathaniel Arnold*.

*Nathaniel Arnold sworn.*

Mr. Justice *Tracy*. Sir, you are called here on the behalf of the Prisoner; What can you say?

Mr. *Arnold*. My Lord, he is my Brother; I have known him a great many Years; I am sorry I am come to speak any thing on such an Occasion: I know him to be a Madman; therefore I hope I shall shew such Things of him, that the Court will think him so.

I have declared to my Lord *Onslow*, that I have no Intention to screen him from Punishment; but to endeavour to save him from the Gallows. My Lord, when he was young, my Father hath tried to put him Apprentice to two or three several Places: It signified nothing; he came home again: Afterwards Mr. *Ford*, who is a Brewer at *Guildford*, persuaded my Father to let him be with him: He took him, he used him like his Child, laid him with his Son; but he would not stay: He was at other Places. Some time afterward he had a mind to make me a Visit at *London*: I knew what an ill-natured Fellow he was to my Father and Sisters: I would have persuaded him to stay with me; that would not do. Afterwards I had a Commission from my Father to allow him Fifteen Pounds a Year, and send

send him into *Yorkshire*. I writ a Letter to an Acquaintance there, and had a Place provided for him, equipped him with Cloaths, and sent him down: He came back again. Nothing we could do would govern him, he seemed so like a Madman. When my Father died, he left him Five Pounds a Quarter. He would lay under Barns, Hay-Ricks: I have caught him under my own Hay-Rick in a Morning, when he might have lain in his own Bed. He had a House in the Neighbourhood; but he had never a Stool, or a Pan, nor nothing at all in it. I don't know whether he had a Chair, but there was no Bed. We could not persuade him off this: We would let him have Money.

Mr. Justice *Tracy*. He would live by himself.

Mr. *Arnold*. He lived by himself; and he hath known when Quarter-Day hath come, because People have dunned him for Money; this *White* the Taylor, *Sturt* the Alehouse-Keeper. And as soon as I came, and he had Notice, he would dart down the Hill to me; where I have been surprized by his Looks: Sometimes I gave him good Words, sometimes bad; sometimes I gave him a little Drink, sometimes none, for fear: He appeared as much like a Madman as ever any body did.

Mr. Serj. *Cbesbyre*. You are his Brother, and you would save him from Hanging; it is natural, and I don't discommend you. You are upon your Oath; and Justice must be done. Sir, let me ask you, whether you looked upon yourself to be a Madman, in treating him in this manner?

Mr. *Arnold*. No.

Mr. Serj. *Cbesbyre*. You say this Man had his Memory return very quick every Quarter-Day; as soon as that came, he would come to you for his Money: Did you ever refuse it him, because he was mad, and not fit to be entrusted with it?

Mr. *Arnold*. No, I never did.

Mr. Serj. *Cbesbyre*. At the several times he was put Apprentice, like an untoward Boy, he would run away; did you look on that as a Sign of Madness? When he was put to a Brewer, did the Person you treated with, or you, look on him to be a Madman?

Mr. *Arnold*. I did understand that he thought him disordered in his Brain.

Mr. Serj. *Cbesbyre*. As every untoward Boy is; when you sent a Letter into *Yorkshire* only, and no Person with him to take Care of him, would you, if you had thought him distracted, have sent him alone to provide for himself?

Mr. *Arnold*. We did not send him alone, but we sent him on Ship-board; I sent down to a Person to take Care of him when he came there; I did not think him so much a Madman as to be chained.

Mr. Serj. *Cbesbyre*. Would you take it to be proper, you that are his Brother, to send him on Ship-board into a Country he had never been in before, only on a Recommendation of a Letter, if you had thought him so mad as not to be able to provide for and govern himself?

Mr. *Arnold*. I sent him to one that was my Customer.

Mr. Serj. *Cbesbyre*. Did you observe in those Letters that he was mad?

Mr. *Arnold*. No, I did not.

Mr. Serj. *Cbesbyre*. Then in these several Passages that he was too sharp for you, is that a Sign of a

Madman? Are these your sole Reasons, because he acted like a naughty Man, that he was a Madman?

Mr. Serj. *Whitaker*. If he was distempered, why did you not let him be confined?

Mr. *Arnold*. I did not think him so much a Madman as to confine him.

Mr. Serj. *Whitaker*. I would ask you, on your own Knowledge, Can you give an Account of any thing that he hath done, but as a sullen or cruel Man?

Mr. *Marfb*. You don't look upon him so mad as to be chained?

Mr. *Arnold*. No, I did not.

Mr. *Marfb*. Did you put him under the Care of any Person?

Mr. *Arnold*. No, I did not; he lived at large.

Mr. *Marfb*. Did he ever live with you?

Mr. *Arnold*. Yes, he did.

Mr. *Marfb*. How did he behave himself then?

Mr. *Arnold*. Very oddly.

Mr. *Marfb*. As how?

Mr. *Arnold*. As a Madman, I thought.

Mr. Serj. *Cbesbyre*. Whether or no did he use to carry a Gun?

Mr. *Arnold*. Yes, often in his Father's Time.

Mr. Serj. *Cbesbyre*. He used to use a Gun?

Mr. *Arnold*. He used a Gun in my Father's Time.

Mr. Justice *Tracy*. And hath he done so since?

Mr. *Arnold*. Yes, several times; and I have seen him with one several times since.

Mr. Serj. *Cbesbyre*. Why did not you take it from him, as he was a Madman?

Mr. *Arnold*. He was my Brother, and I did not care to oppress him.

Mr. Serj. *Cbesbyre*. Now you would have prevented him from doing this Mischief, if you had done so. Did you ever farm any Land?

Mr. *Arnold*. I have.

Mr. Serj. *Cbesbyre*. Did you ever employ him?

Mr. *Arnold*. I have employed him in raking of Hay or Barley.

Mr. Serj. *Cbesbyre*. Did you find he brought it together, or scattered it about?

Mr. *Arnold*. He brought it together, but in such a manner, not right as a Workman ought to do.

Mr. Serj. *Cbesbyre*. Ay, he was a naughty untoward Boy from his Youth.

William *Arnold* sworn.

The Prisoner at the Bar is my Brother; I believe him to be a Madman.

Mr. Serj. *Cbesbyre*. Give your Reasons.

Mr. Justice *Tracy*. What, is he a Lunatick?

Mr. *Arnold*. He is not perfect in his Senses; he did not know what he did at some certain Times: I can't say he was always so.

Mr. Serj. *Cbesbyre*. Go on, and give your Reasons.

Mr. *Arnold*. In my Father's Time I have heard him curse him, and call him wicked and abominable Names, without any Provocation: I have heard him talk to himself, sometimes catch at his Words, sometimes break out into Passions of Cursing and Swearing, without any Provocation: After this I have observed him to burst out into a foolish Laughter, and grin like any Madman: If you asked him what he talked of, sometimes he would give an Answer, sometimes not. This I have observed several Times; as to the particu-

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lar Times, I cannot set it forth; but this, as to the general, that I sometimes have dreaded him. Sometimes he would be pretty rational, and act like other Men.

Mr. Serj. *Chefhyre*. Do you take that for the Sign of a Madman, to do a very wicked thing?

Mr. *Arnold*. Madmen do very wicked things.

Mr. Serj. *Chefhyre*. Do you take all to be Madmen that do wicked things?

Mr. *Arnold*. Some do wicked things for the Sake of Profit and Gain.

Mr. Serj. *Chefhyre*. Was you one that paid him any Share of this Allowance?

Mr. *Arnold*. I am concerned: My Father left a small Matter to my Brother and me, to pay him Five Pounds a Quarter; and my Brother commonly pays him: I have asked him about it sometimes; and he said, the Prisoner would run in Score, and then Persons would dun him.

Mr. Serj. *Chefhyre*. How do you know this?

Mr. *Arnold*. I have heard my Brother say this.

Mr. Serj. *Chefhyre*. Then you know nothing but what your Brother told you?

Mr. *Arnold*. I know my Brother owed Money.

Mr. Serj. *Chefhyre*. The People used to trust him.

Mr. Serj. *Chefhyre*. Mr. *Nathaniel Arnold*, Sir, when you paid him his Quarterage, did he give you a Receipt?

Mr. *N. Arnold*. I always writ the Receipt, and he signed it.

Mr. Serj. *Chefhyre*. Did you not read it over to him, or let him read it?

Mr. *N. Arnold*. Yes, Sir.

Mr. Serj. *Chefhyre*. At Quarter-Day he would be pretty well in his Senses?

Mr. *N. Arnold*. Because he was dunned for Money.

Mr. Serj. *Chefhyre*. Did not he and you use to write and confer by Letters?

Mr. *N. Arnold*. Never in my Days, as I know of.

Mr. Justice *Tracy*. Can he write?

Mr. *N. Arnold*. Yes, he can write.

Mr. Justice *Tracy*. (Asks Mr. William Arnold) Did you never write to him?

Mr. *W. Arnold*. I don't know; it is a great while ago, if I did.

Mr. Serj. *Darnell*. As to what you were speaking of when he ran a Score, did they use to put him in mind of his Quarterage?

Mr. *W. Arnold*. Those Persons he owed Money to would dun him.

Mr. Serj. *Darnell*. And when they did dun him, did you apprehend he knew what they meant by it?

Mr. *W. Arnold*. Yes, he might.

Mr. Serj. *Darnell*. When he was told Quarter-Day was at hand, what would he do?

Mr. *W. Arnold*. I can't say, but he hath dunned my Brother for Money.

Mr. Serj. *Darnell*. When?

Both. When he hath wanted, and had not Money in his Pockets.

Mr. Serj. *Darnell*. Did he never tell you that he had Debts to pay?

Mr. *N. Arnold*. Yes, he hath.

Mr. Serj. *Darnell*. What do you mean when you say, He was sometimes in his Senses, and sometimes not; how often were those Intervals?

Mr. *N. Arnold*. I can't say it.

Mr. Serj. *Darnell*. Did you never observe some Men of Discretion act indiscreetly?

Mr. *N. Arnold*. Yes certainly, I may have done it myself.

Mr. William Arnold proceeds.

The tenth of July last he came to my House in Cannon-Street; I finding of him there, I asked him what brought him to Town; he said he could not tell. What Business have you in Town? It is not a proper Place for you; you have not much Money to spend: Besides, you may fall into bad Company. Says he, I come to see you, I think; what else have I to do? Says he, I can't be easy; my Lord *Onslow* hath bewitched me; he plagues me Day and Night; I can't eat or drink; if I eat any thing, it comes up: I am, says he, as if they pumped the Breath out of my Body.

Mr. Justice *Tracy*. How long ago is this?

Mr. *W. Arnold*. The tenth of July last. I then asked him, why he was so concerned about my Lord *Onslow*; doth my Lord know you? Says he, I don't know that he doth: When did you see my Lord? Says he, I don't know; not this great while: Why are you so disturbed, then, about my Lord? Have you been shooting in my Lord's Manor? No. Says I, Pray be easy; don't disturb yourself with these wild Notions; pray be easy. I then gave him some good Words, and I gave him something to eat, and made him promise to return home, and be easy; which if I would give him Money to return home, he would do, as he did promise me he would: And that was the last time I saw him before this unhappy Accident of my Lord *Onslow*'s.

Mr. Serj. *Darnell*. Did he give you any other Reason of his coming to Town?

Mr. *W. Arnold*. I don't remember he did; after some Hesitation, and a very wild Look, he said, I am come to see you, I think.

Mr. Serj. *Chefhyre*. Give my Lord an Account, whether or no, when he was talking wildly against my Lord *Onslow*, did he tell you who put him upon that?

Mr. *W. Arnold*. If you please, I have asked him these Questions: How came you to do this wicked Act? Did any body put you upon it? No, says he. I am sorry you have done this vile Action. Did my Lord *Onslow* give you any Provocation? Or any body set upon you to do it? Says he, My Lord *Onslow* hath bewitched me, was always a Plague to me, and was the Plague of the whole Country; and several Things to the same Purpose.

Mr. Serj. *Chefhyre*. You talk you gave him Money and Drink, I suppose you gave him both.

Mr. *W. Arnold*. I gave him Victuals and Drink, and Money in his Pocket, provided he returned home; which he promised me he would do.

Mr. Serj. *Chefhyre*. If you looked upon him as a Madman, why would you give him Money, and be satisfied with his Promise that he would return home?

Mr. *W. Arnold*. I never knew that he attempted to do any body Mischief.

Mr. Serj. *Chefhyre*. How did you know but he might do you or himself a Mischief? Pray answer the Question, and be consistent; you have said, you looked upon him as a Madman, and that he could not give any good Reason why he was

was come to London, but said, he is come to see you; he thinks; and you gave him Money, and Victuals, and Drink, on his promising you to return home again; Did he return home?

Mr. W. Arnold. I thought he did.

Mr. Serj. Chesbire. Now the great Question is, Whether he or you are the Madman?

Mr. W. Arnold. I submit that to you. I did ask him where he lodged; but I could not get it out of him.

Mr. Serj. Whitaker. Did you rely upon his Promise that he would go home?

Mr. W. Arnold. I can't say I did entirely depend upon it.

Mr. Marsh. You say, the tenth of July your Brother came to see you in London, and expressed Uneasiness in being plagued by my Lord Onslow; Did he say he would do any thing by way of plaguing my Lord Onslow?

Mr. W. Arnold. No, he did not.

Mr. Marsh. Mr. Nathaniel Arnold, did you see him then?

Mr. N. Arnold. No, I was not there.

Mr. Marsh. Did you hear him at any other time say any thing of my Lord Onslow?

Mr. N. Arnold. I have heard him say my Lord Onslow had bewitched him.

Mr. Marsh. Did you hear him express any Resentment, or that he would make any Retaliation?

Mr. N. Arnold. No, nothing at all of that.

Mr. W. Arnold. I did wait on my Lord Onslow when he used to lay to Sir More Molyneux's Lodge.

Mr. Serj. Chesbire. He used to be there to destroy his Game.

Mr. W. Arnold. I don't know; I never see him there. I did wait on my Lord Onslow; I humbly begged his Lordship's Pardon; but I did really believe him to be a Lunatick.

Mr. Justice Tracy. If you apprehended him to be a Lunatick, and deprived of his Senses and Understanding, you should have taken more Care of him.

Mr. Arnold. It was only at some certain Times; perhaps more in the Spring and Fall than at other Times: I never knew he did any Harm before.

Mr. Serj. Darnell. Don't you know of any Harm he did to one of his Sisters?

Mr. W. Arnold. He hath struck her; I did not see him; I was abroad; but when I came home, she complained to me that her Brother had struck her.

Mr. Serj. Darnell. What was her Name?

Mr. W. Arnold. Elizabeth Arnold. I talked to him about it; he would laugh at it.

Mr. Serj. Darnell. Did you take it to be the Effect of Passion or Madness?

Mr. W. Arnold. I don't know any Reason he had for doing it.

Mr. Serj. Darnell. Did not you apprehend that some Care ought to be taken of him?

Mr. W. Arnold. My Father was then living; so I had nothing to do with him.

Mr. Serj. Darnell. What have you known of any thing he hath done to his Father?

Mr. W. Arnold. I have known him abuse him, and call him Names, without any Provocation. And my Father, at the Request of those that were about him, about ten Years ago, ordered

me to go to the late Lord Onslow, and desire him to grant a Warrant; for his Neighbours had advised him to send him abroad, in hopes that might reclaim him: And at the Bench of Justices at Guildford he was by them taken up and lifted, as a Marine; he went to the Ballick, but did not stay long; the first Opportunity he ran away, and came home again naked and out of Repair.

Mr. Serj. Darnell. I think you was talking of his being sent on Ship-board.

Mr. Arnold. That was when I would have sent him to Yorkshire; but he would not go.

Mr. Serj. Whitaker. Mr. William Arnold, you say he was sent abroad by the late Lord Onslow; have you heard him express any Resentment to my Lord Onslow, by Reason of his being sent abroad?

Mr. W. Arnold. I never did hear him myself, but I inquired of the Neighbours, who said, that as my late Lord Onslow had sent him for a Soldier, People would say, If you don't behave yourself well, my Lord Onslow shall send you for a Soldier again; and that run in his Head, and he never could get it out again.

Mr. Marsh. He came away from his Ship without Leave?

Mr. W. Arnold. Yes, I believe he did without any Leave.

Mr. Serj. Darnell. Was you never told that this Prisoner threatened my Lord Onslow?

Mr. N. Arnold. Never, before this Accident happened.

Mr. Serj. Darnell. Not by any Servant of the House?

Mr. N. Arnold. I don't know that any body told me he had threatened the Life of my Lord Onslow.

Mr. Serj. Darnell. What did the Servants tell you relating to my Lord Onslow?

Mr. N. Arnold. That my Lord Onslow had bewitched him.

Mr. Serj. Darnell. Did they tell you of any Resolution he had took upon that?

Mr. N. Arnold. No.

Mr. Serj. Darnell. Not of any thing he would do?

Mr. N. Arnold. No, I don't know that they did; I don't remember it.

Mary Arnold sworn.

My Lord, I have seen the Prisoner several Times under great Disorders, insomuch, that I took him for a Man out of his Senses at sundry times. I have been in the Family eleven Years; and to the best of my Knowledge I never heard him speak six sensible Words together; and after the Death of my Father he left the House. Before the Death of my Father, I went down every Summer. I have seen him in great Disorder. One fine Day in the Summer-Time, his Sister, his own Sister, went into the Garden; they kept a Dairy, and the Pots, and the Milk-Pans were out; and he threw a Stick, and she reproved him, Pray don't you, says she; you'll break the Milk-Pans: He catches it up, and threw it at my Sister, and struck her with it about the Temples; with that, she fell into a Passion of Tears, had like to have fainted away; we got Water, and recover'd her; but we were afraid he had prejudiced her Eyes, and that she would lose the Sight of one of her Eyes.

Mr.



Mr. Justice Tracy. What, with any Hurt he had gave her?

Mrs. Arnold. Yes, my Lord, and we sent for Mr. Thomas Howard; and he came to us: I don't remember whether it was just then, but he came that Day, and let her Blood. After the Hurry and Surprise, I went to him, and reproved him severely, and ask'd him how he could do such a wicked Thing to his own Sister; he laugh'd at me, and I drew back, for fear he should do me a Mischief. Then I did declare, that I believed that he was, at Times, a Madman. When he sat at Table, he would not sit like other People; he would put his Fingers out, and had strange, surprizing, antick Ways, which I never did see in any Person in my Life before. And after the Death of my Father, he laid at an old Woman's House, that used to weed in the Garden, and when she and I have talk'd about Edward, the old Woman would say, Depend on it, Mr. Edward is a Madman.

Mr. Justice Tracy. It is no matter what she told you, What is your Observation?

Mrs. Arnold. It was always my Opinion: He would do several surprizing Things.

Mr. Justice Tracy. What, you are the Wife of Mr. Nathaniel Arnold?

Mrs. Arnold. Yes, my Lord, I am.

Mr. Serj. Chesbire. How long ago is it, that you made these Observations?

Mrs. Arnold. I have lived eleven Years in the Family: It is about five Years since.

Mr. Serj. Chesbire. You knew him before?

Mrs. Arnold. Yes.

Mr. Serj. Chesbire. How came you to observe it then, and not before?

Mrs. Arnold. He was always a very strange, unaccountable poor Creature.

Mr. Serj. Chesbire. But you reason'd with him, Why would you throw the Stick at my Sister?

Mrs. Arnold. I did.

Mr. Serj. Chesbire. Did you talk to him as a Madman? Why would you use and talk Reason to a Madman?

Mrs. Arnold. I used to reason with him.

Mr. Serj. Chesbire. Did you never speak to them, that Care should be taken of him, and he ought to be put under somebody's Care?

Mrs. Arnold. I have often perswaded my Brother, and Mr. Arnold about him: He lived by himself; he was not mischievous out of the House; we never was afraid of him: About his Sister, that was the only Mischief he did.

Mr. Serj. Chesbire. And you reproved him then?

Mrs. Arnold. Yes; and after that Time he did not come in Sight of any of the Family.

Mr. Serj. Chesbire. Did you hear of his Behaviour out of your Sight, that it was in a disorderly, distracted manner?

Mrs. Arnold. I have heard talk so.

Mr. Serj. Chesbire. If you apprehended it to be so, would not every body be amazed, that no body took Care of this poor Brother?

Mrs. Arnold. It was hard to confine a poor Creature; his Father did not think fit to do it. The last Time I see the Prisoner, he came to my House; it was about a Month before he committed this Fact; and as I was sitting, he came in at the Back Door, and in a great Confusion.

I had a Niece with me, that had never seen him before; says I, Don't be frighten'd at him, he won't hurt you; but he talk'd very much, and look'd extremely wild, and he sat in a strange manner, and my Maid reprimanded him for sitting so: Says I, Will you have a Dish of Tea? No, he would have some Beer. I ordered them to mix it with some small Beer, for fear of making him worse. He talk'd extremely inwardly; says I, Speak out like a Man, if I can answer you, I will. He told me he was bewitch'd, he talk'd to himself, and I heard him curse several Times: Says I, Who hath bewitch'd you? He told me, The Imps. I ask'd him what he meant by Imps? He told me, they danced in his Room all Night, and he could not lie in his Bed for them, and the Devil did tempt him, and the Imps stood by his Bed. After some Time, he would have another Mug of Drink, but I would not give it him: I told him, As for this, it is for want of going to Church, and employing yourself in good Things. To this he said, My Lord Onslow, Why should I be plagued by him? But, to the best of my Knowledge, I never heard any thing about my Lord Onslow before, or of the Person he had in his Mind.

Eleanor Arnold sworn.

I believe this poor Prisoner to have been distracted for near seven Years, and in all that Time, he hath not been capable of forming any Design, or plotting any thing against any body, but hath lived in a rambling, distracted way. The Twentieth of last August, he came to the Parish Church of St. Nicholas, in such a manner, that several of the Congregation observed him to be distracted, and told me so, and spoke of him to me. He then appear'd to me in a dismal Agony, and quite out of his Senses. The same Day, after my Lord Onslow was so barbarously shot, I see Mr. Justice Allen, and ask'd him, If he had seen my Brother? Mr. Allen told me he had, and had been with him twice since. I ask'd him, if he thought my Brother to be distracted? Mr. Allen said, He appear'd to him to be so, and to be an Enemy to all Mankind. I ask'd him, If the Prisoner had given him any Account how he came to do such a horrid Fact? Mr. Allen answer'd, That this poor Prisoner desired him several Times to shoot him through the Brains. I know it is reported, that he is not distracted, but I affirm it to be otherwise: I have seen him, for nine Hours together, talk Nonsense; sometimes curse and swear, without the least Provocation: And if your Lordship will give me Leave, I can relate several Facts, as Instances of his being distracted. My Lord, sometimes, when we have gone out, he hath got the Fuel, swept it up together, and made it up into a great Fire, as if he would fire the House. I have seen him take live Coals out of the Wood Fire, and throw them into his Father's Plate: He would often talk to himself several Hours: Sometimes he would be in the most tormenting Agonies: And I do declare I have been in terrible Frights, for fear he would do some Murder.

Mr. Serj. Chesbire. If you apprehended your Brother in these melancholy Circumstances, why did not you take Care of him?

Mrs. Arnold. We apply'd to the Minister of the Parish, who was a very good Man, Mr. Woodward,

Woodward, and desired that he would endeavour to reclaim him: He talk'd to him, but at last, he declared, he ought to be put into some Mad-House.

Mr. Serj. *Cbesbyre*. When was this?

Mrs. *Arnold*. About five Years ago.

Mr. Serj. *Whitaker*. Was there any Discourse of applying to a Physician, &c. You say a Minister made use of Means to reclaim him, I don't hear of any Physician consulted.

Mrs. *Arnold*. He never had any Physician, to my Knowledge.

Mr. Serj. *Whitaker*. Had he ever any Physician, or any Care taken of him, as if he was a Madman?

Mrs. *Arnold*. No.

Mr. Justice *Tracy*. He hath struck you?

Mrs. *Arnold*. No, not me, it was another Sister.

Mr. Serj. *Darnell*. Did you apprehend, from any of these Circumstances, that he was like to do Mischief?

Mrs. *Arnold*. Sometimes I have been afraid of it: He would make a great Fire, and shut the Door, and keep us out.

Mr. Serj. *Darnell*. You have seen him take live Coals, and throw them into his Father's Plate?

Mrs. *Arnold*. I did.

Mr. Serj. *Darnell*. Was you not afraid he would have set the House on Fire? Had he not Sense enough to do that?

Mrs. *Arnold*. I believe he had done it, if he had not been prevented.

Mr. Serj. *Darnell*. You did not think him so mad, as that it was necessary to confine him?

Mrs. *Arnold*. I did, in my Conscience, think so.

Mr. Serj. *Darnell*. And you did not confine him?

Mrs. *Arnold*. It was not in my Power.

Mr. *Marsh*. How long have you lived at *Guildford*?

Mrs. *Arnold*. Three Years at *Guildford*.

Mr. *Marsh*. You can't but have observ'd him then often out of Order.

Mrs. *Arnold*. Often so, by Fits.

Mr. *Marsh*. One of your Brothers says, he used to be worse in Spring and Fall. Did you ever send for any Physician?

Mrs. *Arnold*. No.

Mr. *Marsh*. If he was so Spring and Fall, a little Bleeding would have done him good.

Mrs. *Arnold*. I don't know but it might.

Mr. *Marsh*. Did you ever send to your Surgeon to bleed him?

Mrs. *Arnold*. No.

Mr. Serj. *Darnell*. Was it the Opinion of the Family, that he should be sent abroad for a Soldier?

Mrs. *Arnold*. It was the Opinion of many of his Friends; but that is eleven Years ago.

Mr. Serj. *Darnell*. But he used to have his frantick Tricks then?

Mrs. *Arnold*. Yes.

Mr. Serj. *Darnell*. Whether did you look upon it, that sending him for a Soldier would reclaim him, or cure him of his Madness?

Mrs. *Arnold*. Some were of Opinion it would.

Mr. Serj. *Darnell*. What! cure a Madman?

Mr. *Marsh*. Pray, how long hath your Father been dead?

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Mrs. *Arnold*. Five Years, last *October*.

Mr. *Marsh*. How long before his Death was this flinging the Coals on his Plate?

Mrs. *Arnold*. I don't know, but I believe it's more than seven Years ago.

Mr. *Marsh*. Do you know any thing that should give him this Turn of Mind?

Mrs. *Arnold*. No.

Mr. *Marsh*. Whilst you have lived at *Guildford*, hath it not been known and heard, that he went a sporting with a Gun?

Mrs. *Arnold*. Yes, frequently.

Mr. *Marsh*. Did you ever caution any body against letting him have a Gun, or Ammunition?

Mrs. *Arnold*. No, I never did.

Mr. *Marsh*. Was he under any body's Inspection, or Care?

Mrs. *Arnold*. No.

Mr. Serj. *Whitaker*. Did he not kill Rabbits, and sell them?

Mrs. *Arnold*. I don't know.

Mr. Serj. *Whitaker*. Hath he not taken Fish, and sold them?

Mrs. *Arnold*. I don't know.

Mr. Serj. *Whitaker*. Did you ever apprehend any Danger from his using his Gun?

Mrs. *Arnold*. Sometimes we have.

Mr. Serj. *Whitaker*. How comes it you have not taken it from him?

*Elizabeth Arnold sworn.*

Mrs. *Arnold*. My Lord, I have lived with him some Years, and for more than seven Years I have observed him to be mad at some Times, though not so mad then as he hath been since: He was so very mad sometimes, that I was very apprehensive of being mischief'd by him; he would have Pistols and Guns, but I have taken them all away from him. Sometimes he would let off his Gun in the Kitchen, and give no Warning: A great many Times he would sit and talk to himself, and swear: Sometimes he would talk to inhumane Creatures in a different manner from what I have heard any body in their Senses do. About a Month before my Lord *Onslow* was shot, I observed, as I could by his Eyes tell when his Fit was coming, I observed him to look more wild than ever I see him in my Life before. The twentieth of last *August*, he came into the Parish Church of *St. Nicholas*, stood in the Front of the Congregation, with his Face over his Breast, and his Hair in such a dismal manner, that I see several look at him; and they told me, when I came out of the Church, that my Brother look'd so frightful, that they would not meet him for ever so much. On the twenty-eighth of *August* last, we met Mr. Justice *Allen*, and we ask'd him, if he did not think him distracted; he said, He is a great deal so, and he appears to be an Enemy to all Mankind; that he would give him no Account, why he did this Action, but desired him several Times to shoot him through the Brains. As to myself, the Relation my Sister, *Mary Arnold*, hath given of it, is true, he had no Provocation from me; so far from that, I was afraid of him, and I said, Don't throw the Stick at me; but as soon as my Back was turn'd, he took up the Stick, and threw it at me, and afterwards laugh'd at it.

Mr. *Marsh*. Where did he live, when you was afraid of the Danger of his Pistols and Guns?

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Mrs.



Mrs. *Arnold*. Sir, he lived in my Father's House at *Katharine-Hill*, where I lived.

Mr. *Marsh*. Then I find, when you was in the Family, it seems you were afraid of his Guns and Pistols; How long have you lived at *Guildford*?

Mrs. *Arnold*. More than three Years. I have left off House-keeping five Years.

Mr. *Marsh*. Have you not known him have his Gun at his Command, and that he used to go frequently a shooting?

Mrs. *Arnold*. I did not know it of myself, but I believe he did: He had no Gun of his own, but he used to borrow one: When I left off House-keeping, I sold my Gun, and would not let him have it.

Mr. *Marsh*. Why should you take so much Care when you lived together in the Family, and take no Care afterward?

Mrs. *Arnold*. I can give no Account of that; but my Father hath been advised several times to put him into a Mad-House by Mr. *Woodward*, the Minister of the Parish; and Mr. *Woodward* advised my Father, in my Hearing, to put him into a Mad-House; for he said he was mad, and nothing else would do him Good.

Mr. *Marsh*. Do you know this Mr. *Smith*?

Mrs. *Arnold*. No; I don't know that ever I saw him in my Life before: I do not know him. When I first heard of this horrid Action, every body said he was mad.

*Eleanor Gittings sworn.*

My Lord, I have believed him to be a Lunatick ever since I knew him; which is almost nine Years: I was at his Father's House with a Son of my Master's; I see him do a great many wild Actions; I have heard him swear and curse, sling Things about the House, without any Provocation: I have been often surprized at it; but hearing he had never done no Harm, I was passive with it. My Mistress hath been at *Katharine-Hill* for four Years last past, six, eight Months at a time.

Mr. Justice *Tracy*. What, at that House?

Mrs. *Gittings*. At that House, my Lord; and hath come in at the Back-Door, and sat in the Kitchen; and several times I have found him talking to himself: I have come in and spoke to him, and he hath made no Answer. Last *March* I went down: My Master's Son was sick, and I sent for him to go a Fishing, to get a little Fish. A Day or two after he came in at the Back-Door into the Kitchen, he sat himself down; I desired he would go a Fishing, and get some Fish for the Child: He sat in a confused Order; and at last he told me the Child was well enough. I set Victuals before him, but he did not incline to eat or drink, but he was in a great Hurry and Confusion, more than I have seen him before: I was amazed at it, and I asked him the Reason; he told me my Lord *Onslow* disturbed him Day and Night; and also he had sent Imps and Devils into his Room, and he had no Sleep, and he was with him wherever he went. I have seen him since this, and I always found him in great Disorder, always complaining of my Lord *Onslow*'s bewitching him, and he had sent into his Chamber Devils and Imps, and he had no Rest, and he could not go a Fishing, for my Lord *Onslow* was with him. I inquired at that time

whether he had been fishing in my Lord *Onslow*'s Ponds, or had offended his Lordship with any thing he had said? No; he knew nothing, but that he was with him perpetually. About *May* he hurt his Arm, by jumping over a little River; and, as I was told, he went to Mr. *Thomas Howard*.

Mr. Justice *Tracy*. That's nothing what you was told.

Mrs. *Gittings*. My Lord, I only bring this as a Circumstance. He went there, and Mr. *Thomas Howard* applied a Plaister, and rolled it up. The next Morning he sent his Man to know how he did: The Man called at a Neighbour's House; it seems he did not care to go by himself; and when he came into his Room, there he found the Plaister and Roll thrown about the Room.

Mr. Justice *Tracy*. Did you see this?

Mrs. *Gittings*. When I heard of it, I went to him, and inquired why he served Mr. *Howard*'s Man so, and would not let him do up his Arm? Says he, Mr. *Howard* and his Man are Rogues; they only wanted to make Issues in his Arm, and his Arm was well enough, and they should do nothing to it. This I heard him say. Some little time after that, I understood that Mr. *White*'s Rooks had offended him, by the Noise they made in the Night, that he could not sleep for them. I have heard abundance of Stories that I must not repeat here; so will only tell you some. He came one Day into the Kitchen, and sitting in a disconsolate manner, I asked him how he did; he told me he was bewitched and disturbed, and Mr. *White*'s Rooks made such a Noise, that he could not sleep nor be at Peace Day nor Night: I told him he had used *White* ill: He said he had no more Business to keep Rooks than he; and Mr. *White* is a Rogue, and no body loves him; and he knew his Wife did not love him. This he told me, and said they had disturbed him all Night and Day; and was then upon the Story of my Lord *Onslow* again; I thought he had got out of one into another.

Mr. Justice *Tracy*. When was this?

Mrs. *Gittings*. After *May*, between *May* and *June*, in the middle of *June*, I believe. After this was over, that the Rooks were done with, and got out of his Head, then he begins with my Lord *Onslow* afresh; then I often heard that he complained of my Lord *Onslow*'s plaguing him Day and Night.

Mr. Serj. *Chebyre*. Don't tell what you have heard from other Folks.

Mr. Serj. *Whitaker*. Did not you live with Mr. *Edward Arnold*?

Mrs. *Gittings*. I live now with Mr. *Nathaniel Arnold*.

Mr. Serj. *Whitaker*. Did you ever hear the Prisoner threaten my Lord *Onslow*, or his Life?

Mrs. *Gittings*. Never his Life, nor nothing like it.

Mr. Serj. *Whitaker*. Did you never tell one of these Brothers that you have heard him thus threaten my Lord *Onslow*?

Mrs. *Gittings*. No, I never did hear him threaten my Lord *Onslow*.

Mr. Serj. *Whitaker*. Did you tell any thing of the Prisoner?

Mrs. *Gittings*. Yes; I told my Master's Brother that I was in a great Fright about the Prisoner;

soner; that I believed him much worse than ever I see him; and much feared he would do himself a Mischief.

Mr. Serj. *Whitaker*. What Answer did he make?

Mrs. *Gittings*. My Master's Brother seemed surprized.

Mr. Serj. *Whitaker*. Did not he say, Mind your own Business, you have nothing to do with it; or to that purpose?

Mrs. *Gittings*. No; I know nothing of it that he said so. I have a great deal more to say, my Lord. My Mistress and I coming from Church one Day, some time before he shot my Lord *Onslow*, and coming from Church, a Shower of Rain drove my Mistress into the House of his Landlady; I was with her: The Landlady came, and my Mistress asked where the Prisoner was; she said he was within: My Mistress told her that she was very angry with him, and did not desire to see him; she was very angry that he should go away with Mr. *Fawks's* Horse. His Landlady told my Mistress, He is certainly mad, and it was not to be minded what he said or did.

Mr. Serj. *Cheffyre*. What you have heard goes for nothing.

Mrs. *Gittings*. I was to see the Prisoner in the Goal in *Southwark* the twenty-third of last Month, being the first time I ever saw him since he shot my Lord *Onslow*: I found him in great Disorder then; and I asked him how he came to do such a wicked thing: He gave me no Answer, or none that I could make any thing of. I asked him if any body had set him to do it; and he told me it was one *Sweetman* and *Thomas Farmer*; which I knew to be two little Boys: I wondered at his Answer. I asked him how he did, and told him the Time drew near for his Trial: He took no Notice of that; he said there was a great Plague in the World; and also that he knew not how it came; but repeated it, God take his Soul, if he knew how the Plague came, or any thing about it: But abundance of times these Words were repeated.

Mr. Serj. *Cheffyre*. What Words?

Mrs. *Gittings*. God take his Soul, if he knew how the Plague in the World came. I inquired what he meant by it; he told me the Wickedness of wicked People had occasioned it, and there would be great Mourning in all the World. I inquired what he thought would become of him if he was to be tried and condemned; he told me he should have a Fortnight's Time to go where he would, and do what he would: Then every body would be easy, and all would be at Peace. This was on *Saturday* last; and he repeated the Words, God take his Soul, if he knew any thing of the Plague in the World, or any thing about it.

Mary Martin sworn.

Mr. *Edward Arnold* was in my House, which People said was mad: *Ned Arnold*, mad *Ned Arnold*. People would give him that Report; or crazy *Ned Arnold*. *Ned Arnold* was in my House, and accordingly called for a Mug of Beer. And please you, I keep a Publick House. When I had fetched him a Mug of Beer, he sat himself down by the Fire; he fell a swearing and cursing, and swore that my Lord *Onslow* was in his Belly. Says I, *Ned*, what makes you swear, and curse my Lord *Onslow* so? It is Pity, *Ned*,

but my Lord should know it; if he knew he was in your Belly he would quickly come out of it. Says I, If you will have, *Ned*, a Chariot, you and I will go to him. Then we concluded what Time to go, which was about Eight or Nine o'Clock the next Morning, to go to my Lord *Onslow's*, and tell him he was in his Belly. Accordingly he got out of his Chair, and took a Knife, and swore he would carry that with him. I tell you nothing but what is true. So then comes in *Harry* —, Mr. *Flutter's* Man that belongs to the Horses. He comes in with a Whip in his Hand. I said, *Harry*, will you go and assist *Ned* and I to my Lord *Onslow's*, and tell my Lord that he is in *Ned's* Belly? Then several came in, several Carriers to drink at my House: And this same Man fell a laughing heartily. I said, *Harry*, will you go? Yes, says he. But, says I, *Ned Arnold* talks of carrying a Knife. No, says he, if you carry a Knife, we may carry you there, but my Lord will take care of us, and send us to the House of Correction. Ay, says I, and hang you too. He had been in my House twice before. I will leave nothing that I can remember.

Soll. for the Prisoner. I desire she may be asked whether he did not open his Bosom, and bid her feel for my Lord *Onslow*.

Mrs. *Martin*. Some time before he came to our House, and sat scratching his Bosom, and feeling and looking down into his Bosom, cursing and swearing, and he said my Lord *Onslow* was in his Bosom, and he had such an Influence over him, that he could neither eat, nor drink, nor sleep, or be at Ease, for him.

Mr. Serjeant *Comyns*. You spoke of carrying a Knife; Did you ask him the Reason why he would carry a Knife?

Mrs. *Martin*. No, I did not.

Mr. Serj. *Comyns*. Did you apprehend that he design'd any Mischief?

Mrs. *Martin*. No, I had no Thoughts about it; I only talked in a jocular way. And it please you, my Lord, he was there looking in his Bosom. One time he comes, says he, There is *Sukey Monneux*, my Lord *Onslow* is got into *Sukey Monneux's* Belly. I did not know there was such a Gentlewoman. Says he, He is such a Plague to her, that she cannot eat, drink, or sleep. Says my Daughter, about eighteen or nineteen, not twenty, Years old, Can't you shit? Because he had said he could not eat or drink. If I shit, says he, it won't stink like another Man's Turd. My Lord, it is true. I think I have nothing more to say.

*Sweetman sworn,*

I took him to be a crazy sort of a Fellow; not to be in his Senses at all times. He would say he was plagued with the Buggs and Bollies, that he could not rest a Night; he was fain to stop his Ears with the Rugg, or he could not sleep. In the Morning sometimes he hath asked me, Whether I could rest? I told him, Very well. I asked him, How he rested? Says he, I am plagued with the Buggs and Bollies. He lodged at my House fifteen Months.

Mr. Justice *Tracy*. How long ago is it since he lodged at your House?

*Sweetman*. He lived there till this Accident happen'd.

Mr.



Mr. Serj. *Whitaker*. Did not you lend him a Gun?

*Swetman*. Not at that Time: I did use to lend him a Gun in the Winter, to shoot Sparrows, &c. but I did not lend it him at this Time that this happen'd.

Mr. Serj. *Whitaker*. Why did not you take the Gun away from him? This very Gun, that he shot my Lord *Onslow* with, did not you lend him?

*Swetman*. I did not lend it him at that Time: I did say, he might have the Gun to go out.

Mr. Serj. *Whitaker*. You gave him Leave to have this Gun; then I ask you, Would you lend a Madman your Gun?

*Swetman*. I take him to be worfe sometimes than other, as in *Spring* and *Fall*.

Mr. Serj. *Whitaker*. Did you take him to be sensible at this Time?

*Swetman*. He is more sensible in the Winter.

*Solicitor for the Prisoner*. My Lord, I desire he may be ask'd, Whether he did not hear him say anything of my Lord *Onslow*; that my Lord *Onslow* had been there with his Wife? Or what he heard pass'd between this Man's Wife, and my Lord *Onslow*?

*Swetman*. He said, My Lord *Onslow* had brought a Hamper of Wine into the Kitchen, and sat it on the Dresser over Night, and when he rose in the Morning, the Wine was drunk out of the Hamper, and the empty Bottles were upon the Dresser. When I have come home, It is true, says he, my Lord hath been friggetting here, and my Lord keeps Company with your Wife, and your House is disturb'd; they keep dancing above Stairs, that I can't rest. I have open'd the Kitchen Door, to show him that it was not so; that there was no Hamper nor Bottles there.

Mr. Serj. *Whitaker*. Pray give an Account when he had your Gun at first.

*Swetman*. Sir, I can't do it.

Mr. Serj. *Whitaker*. I ask you, where your Gun was at that Time?

*Swetman*. It was at my House.

Mr. Serj. *Whitaker*. What Gun had he when he shot my Lord *Onslow*?

*Swetman*. It hath been reported that it was my Gun.

Mr. Serj. *Whitaker*. How came he by that Gun?

*Swetman*. I will tell you how he might come to have the Gun: I was at Mr. *Waite's*, howing of Turnips, before this happen'd; says Mr. *Waite*, Can you catch my Conies? Says I, I believe some can do it better than I: Says he, I will give Sixpence a Coney to any body, for catching of them. When I came home, I happen'd to drop a Word about it; my Boy was by; says he, *Ned*, shall you and I go and catch Conies? Says he, I have never a Gun; says he, You may take my Father's Gun; and says the Boy, We will go halves.

Mr. Serj. *Whitaker*. Then you left the Gun, as he might take it?

*Swetman*. I did not lock it up.

Mr. Serj. *Whitaker*. How came you to let a Gun be so in the way, as he might come at it, if you apprehended him to be a Madman?

*Swetman*. In former Times he did carry a Gun, and he came of a good Family: I thought

I might let him have a Gun, when I see him in his Senses.

Mr. Serj. *Comyns*. You say, this Discourse about giving of Sixpence to kill Conies, gave occasion that he had your Gun?

*Swetman*. Yes, Sir.

Mr. Serj. *Comyns*. Did he hear you speak it, that such a one would give Sixpence, &c.

*Swetman*. Not to my Knowledge; but my Boy took it up, and told him the next Day.

Mr. Serj. *Chesbyre*. Pray, this Story you tell us about a Hamper of Wine, when was it?

*Swetman*. A pretty while before this happen'd.

Mr. Serj. *Chesbyre*. What do you call a pretty while?

*Swetman*. I believe it might be half a Year.

Mr. Serj. *Chesbyre*. Did not he use to have the Key of your House to go in and out as he pleased?

*Swetman*. We had two Keys; he had a Key, but we could bolt the Door, and keep him out of the Kitchen: I was afraid he would fire the House.

Mr. Serj. *Chesbyre*. He might come in and out when he would?

*Swetman*. We did not trust him with that Liberty to go into the Kitchen.

Mr. Serj. *Darnell*. Did you trust a Man in your House, that you was afraid would fire it?

*Swetman*. He could not come to that Place where the Fire was.

Mr. Serj. *Darnell*. You was often frighten'd lest such a Thing should happen?

*Swetman*. I was going to turn him going: I told my Wife, This Fellow is so mad, that we can't keep him any longer; he is fit to go to *Bedlam*.

Mr. Serj. *Comyns*. Did you hear him speak of my Lord *Onslow*?

*Swetman*. He hath been railing some Time. When my Boy was alone with him, he ask'd my Boy for my Hog-Knife; the Boy ask'd him, What he would do with it? And he said, He would kill himself.

Mr. Serj. *Comyns*. Did you hear this?

*Swetman*. I did not hear him say it, but my Boy told me when I came home.

Mr. Serj. *Comyns*. Did you ever hear him speak by way of threatening my Lord *Onslow*?

*Swetman*. Sometimes he would hollow as an Owl doth; sometimes he would say Cuckoo.

Mr. Serj. *Comyns*. Have you ever heard him threaten my Lord *Onslow*?

*Swetman*. I have heard him curse and damn my Lord *Onslow*.

Mr. Serj. *Comyns*. Have you never heard him threaten him?

*Swetman*. One Time, about a Twelvemonth ago, he said he would shoot my Lord *Onslow* at the Horse-Race, and look'd very wild.

Mr. *Marsh*. What Horse-Race? *Guildford* Horse-Race?

*Swetman*. I took it to be so.

Mr. *Marsh*. Did he say he would shoot him at the next Horse-Race? Or he would have shot him at the former Horse-Race?

*Swetman*. I took no further Notice of it; for I took him to be a crazy Fellow.

Mr. *Marsh*. But what did he say?

*Swetman*. He said he would shoot my Lord *Onslow* at the Horse-Race.

Mr.

Mr. *Marsh*. When was this? Before the Horse-Race?

*Sweetman*. It was in May was Twelvemonth: There was one Horse-Race pass'd: I never heard he did motion it.

Mr. *Marsh*. You say this was May was Twelvemonth; How often hath he had the Use of your Gun since?

*Sweetman*. I don't know how often, because I did not mind: He never did no Harm.

Mr. *Marsh*. Hath he had it several Times?

*Sweetman*. He hath had it several Times.

Mr. Serj. *Whitaker*. Had he not the Gun whenever he would?

*Sweetman*. No; I used to carry it to Wood-bridge, to shoot Sparrows.

Mr. *Marsh*. Did not you bring the Gun home again?

*Sweetman*. Yes.

*Solicitor for the Prisoner*. My Lord, as to the Time of his taking the Gun, to go to shoot Mr. *Waite's* Conies, Whether it was not the same Morning that my Lord *Onslow* was shot?

Mr. Justice *Tracy*. He tells you he was not at home.

*Solicitor*. According to his Information, whether it was not at that Time?

Mr. Justice *Tracy*. He said he did not lend him his Gun then, but he had it then.

*Solicitor*. Whether the Lane, in which this Fact was committed, doth not lead to Mr. *Waite's* Turnip-field, where the Conies were?

*Sweetman*. It lays the same way, and my Wife thought he went, because my Wife see him, and had lent him Money to buy the Shot, to shoot the Conies with.

John Dedman sworn.

Mr. Justice *Tracy*. What do you know of this Man?

*Dedman*. I know him to be a Madman.

Mr. Justice *Tracy*. Why?

*Dedman*. By reason my Lord *Onslow* was always in his Mind; he was always troubled with my Lord *Onslow*; he could never take no Rest, the Devils and Buggs troubled him so. In the next Place, he rented a House, he had neither Goods nor Beds, nor Chairs, either to sit or lie down upon; he had nothing to lie down upon. He would come to the House, and he would beat them all out of the House: I have been call'd from my Work, to make Peace among them.

Mr. Justice *Tracy*. What House? To whom was this?

*Dedman*. To his Friends, to his Sisters.

Mr. Justice *Tracy*. How long ago is this?

*Dedman*. About five or six Years ago.

Richard Wheatly sworn.

*Wheatly*. I have shaved him these two Years and he hath come into the Shop sometimes, so that I have been afraid to shave him: Sometimes he would come in, and go out again, and hath spoken never a Word.

Mr. Justice *Tracy*. Why have you been afraid?

*Wheatly*. Because he hath swore all the Time I have been shaving him.

*Solicitor for the Prisoner*. My Lord, I desire he may be ask'd, Whether he did not use to desire him to cut his Throat?

*Wheatly*. One Time as I was shaving of him, he said, Damme, cut my Throat.

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Mr. Serj. *Cheffrey*. I suppose, at that Time, you had given him a Nick; I ask you, Whether he said, Cut my Throat? Or, You will cut my Throat?

*Wheatly*. He said, Damn you, cut my Throat.

Mr. Serj. *Whitaker*. What Answer did you make?

*Wheatly*. None: I was afraid.

Mr. Serj. *Whitaker*. Did you take every Man for a Madman, that swore when you cut him?

Tydie sworn.

*Tydie*. I have known *Edward Arnold* for several Years; and I never knew but that he was a crazy sort of a Man.

Mr. Serj. *Whitaker*. What do you mean by a crazy Man?

*Tydie*. He had several foolish Expressions.

Mr. Serj. *Whitaker*. Did you take him to be a distracted Man?

*Tydie*. Sir, I could not take him to be otherwise.

*Solicitor for the Prisoner*. My Lord, I desire he may be ask'd, Whether he heard him express himself about the Buggs, and Bollies? Or, Whether he proposed to take his Gun, and shoot himself?

Mr. Justice *Tracy*. Did you hear him talk about the Bollies?

*Tydie*. I heard him say, that the Bolleroys, and the Plagues plagued him so, that he could not take his Rest at Night.

*Solicitor*. Whether he desired that he might take his Gun, and shoot himself?

*Tydie*. I have seen him several Times.

Mr. Justice *Tracy*. Did he say he would take his Gun, and shoot himself?

*Tydie*. I can't say that; I don't know it, I never heard it: I have heard him sit and rail, and swear, and damn to himself.

*Solicitor*. I desire he may be ask'd, If he hath ever heard him say any thing about any Transaction between my Lord *Onslow* and this *Sweetman's* Wife?

*Tydie*. I have heard him say, that my Lord *Onslow* was one Night there, at *Sweetman's* House, and he drank out a Hamper of Wine there; and they had Fiddles, and danced; and he said, one *Sentiman* play'd to them: And when he came down in the Morning, there was the empty Bottles upon the Table.

Thomas Poulter sworn.

*Poulter*. I ever took the Man to be not as another Man; he was always out of his Mind.

Mr. Serj. *Whitaker*. How long have you known him?

*Poulter*. Sir, I have known him this Nine Years. One Time, he came in in a Passion where I was, and said he would kill me.

Mr. Serj. *Whitaker*. What was the Reason?

*Poulter*. I know none at all; but it pass'd over, and he never did me any Harm, or any Wrong. About a Fortnight before this was done, I was working in the Field, and he came to me, and look'd mighty melancholy; he swore and cursed, and he said at last, Damn *Tom Onslow*; and I ask'd, how my Lord *Onslow* had hurt him? he said, he had bewitch'd him four or five Years ago, and he had had nothing gone through him never since, and he should never be able to go up *May Hill*. This was about a Fortnight before this Accident happen'd.

K k k k

Mr.



Mr. Serj. *Whitaker*. Where do you live?

*Poulter*. At *Godalming*.

Mr. Serj. *Whitaker*. Did you give any of his Relations Notice of this?

*Poulter*. A great many People knew of this: He said, he wilst'd he could see him to scratch him to fetch Blood of him, because he had bewitch'd him, and he would go to the King, and know the Reason, why my Lord *Onslow* plagued him so.

Mary Morris *sworn*.

*Morris*. My Lord, I have known him almost these five Years; I always thought him mad, by his mad Actions, as I have seen him in; he hath often come in at his Sister's House, and hath sat himself down, and hath talk'd to himself; and hath swore and cursed, and talk'd of the Plague, and would look one way and t'other, and talk'd to himself: He would sit so an Hour together, and then he hath got up, and gone away, when his Sister hath not been at home. On the *Saturday* before he shot my Lord *Onslow*, he came and ask'd for some Small Beer: My Mistress was not at home; I fetch'd him some; he sat himself down, grinn'd his Teeth, and had such Actions; look'd one way and t'other, and without any Provocation, cursed and swore, and talk'd of Plagues: I was so frighten'd, I call'd my Fellow-Servant into the Room; I was afraid to stay with him.

Mr. Justice *Tracy*. Did he show any Marks of Rage?

*Morris*. Yes, my Lord.

Mr. Justice *Tracy*. What did he do, besides grinning his Teeth?

*Morris*. He did not say much; he look'd about, and talk'd to himself.

Mr. Justice *Tracy*. How did he talk?

*Morris*. He talk'd to himself.

Mr. Justice *Tracy*. How?

*Morris*. Oh! very wildly; with his Eyes looking one way and t'other.

Mr. Serj. *Whitaker*. Was he cursing at any body in particular?

*Morris*. Not as I heard; I did not hear him mention any body's Name.

*Solicitor for the Prisoner*. My Lord, I desire this Witness may be ask'd, What Transaction she saw in the Man, and what Directions she received from the Keeper, in the House of Correction?

*Morris*. I carried him Victuals every Day, while he was there: He said very little to me, but behaved himself much as he used to do. The Goal-Keeper, Mr. *Flutter*, and *John Pullen* told me, that my Mistress should not cut him Victuals with Bones, nor they would not let him have a Knife; they were afraid he would make away with himself; they stripp'd the Meat off from the Bones, before they gave it him: The good Woman of the House where he lodged, and the Boy, went with me to see him; says he, *Yes*, How do you do? Do the Plagues and Bollies plague your House as they used to do, when I was there? and the Boy laugh'd at it.

Stephen *Fachin sworn*.

*Solicitor for the Prisoner*. My Lord, I desire he may be ask'd, Whether he hath not found him laid in a Lodge all Night in the Air?

*Fachin*. My Lord, I found him in *Loosey-Lodge*, and there he was when I went to work

upon a Place, where there is none but hard Timber.

Mr. Justice *Tracy*. When did you find him there?

*Fachin*. I can't remember the Time.

Mr. Justice *Tracy*. Was it Night or Day?

*Fachin*. It was in the Morning.

Mr. Justice *Tracy*. Had he been there all Night?

*Fachin*. As far as I know, he had.

Mr. Serj. *Cbesbyre*. How long ago is this?

*Fachin*. About two Years ago.

Mr. Serj. *Cbesbyre*. What Time was it?

*Fachin*. It was in the Morning about Seven o'Clock; we went to mend the Tiling of the Lodge; I can't tell the Time of the Year it was.

Mr. Serj. *Cbesbyre*. About what Work was you about?

*Fachin*. Mending the Tiling of the Lodge: It was the Spring of the Year.

Mr. Serj. *Cbesbyre*. About *Lady-Day*?

*Fachin*. It was then about.

Mr. Serj. *Cbesbyre*. Did you ask whether he had been there all Night?

*Fachin*. No; I did not find him at first, but he popp'd his Head out: When I found that, I look'd up, and heard a Man cry, Don't meddle with my Tobacco: I was surprized at it.

Mr. Serj. *Cbesbyre*. Who brought you here?

*Fachin*. I was subpcena'd.

Mr. Serj. *Cbesbyre*. Who brought you?

*Fachin*. Mr. *Arnold*.

Mr. Serj. *Cbesbyre*. Which of them was it?

*Fachin*. I don't know both; Mr. *Arnold*, of *Katharine-Hill*.

Mr. Serj. *Cbesbyre*. Had you any Promise of any Money, or any thing else, if you could swear him a Madman?

*Fachin*. No, my Lord.

Mr. Serj. *Cbesbyre*. Were you not told, it should be worth Thirty or Forty Shillings to you, if you could prove him a Madman?

*Fachin*. I had nothing promised me.

Mr. Serj. *Cbesbyre*. I ask you, Whether they said, It should be worth so much to you?

*Fachin*. No.

Mr. Serj. *Cbesbyre*. Did no body say so to you?

*Fachin*. No.

Mr. Serj. *Whitaker*. Have you not declared, that this *Arnold* was a Rogue, and no Madman?

*Fachin*. I believe he is a Lunatick Man.

Mr. Serj. *Whitaker*. I ask you, Whether you have ever declared that you believ'd him a Rogue, and no Madman?

*Fachin*. I believe I always took him to be a Madman.

Mr. Serj. *Darnell*. Did you never say to any body, that it was your Opinion, that he was not mad, but a Rogue?

*Fachin*. Sir, I never said any such Thing in my Days: No, indeed, I did not.

Mr. Serj. *Whitaker*. Did you not say so to one *Sentiman*?

*Fachin*. No.

Mr. Serj. *Whitaker*. Had you no Discourse about it?

*Fachin*. No, no.

Robert Dandy *sworn*.

*Dandy*. My Lord, I have known him a great many Years; I lived near his Father's; I never thought him any thing but a crazy Man, seldom in his Senses: His Father hath sent for me over several

several Times, to desire him to be civil; for he would be ready to beat his Sisters and his Father out of Doors: I told him, if he would not be civil, I would fend him for a Soldier. I had him before a Justice of Peace, to frighten him, but he was as bad when he came home again.

Mr. Justice Tracy. Did you hear him threaten to turn his Father and Sisters out of Doors?

Dandy. I did not hear him: He abused his Father, and I had him before a Justice of Peace; I was Constable.

Mr. Serj. Chesbire. Did you take this to be a Carriage to a Madman, or to a wicked Man, to reclaim him?

Dandy. I did not take him to be in his Senses.

Mr. Serj. Chesbire. Why did you carry him before a Justice? Was he not a wicked Rogue, an untoward Boy? Was not that the Reason why his Father sent him for a Soldier? Do you use to fend Madmen for Soldiers?

Mary Swetman sworn.

Solicitor for the Prisoner. This is the Wife of ——— Swetman.

Mr. Justice Tracy. What have you to say? What is your Opinion of the Prisoner?

Swetman. I really think he is a Madman, and not in his right Senses.

Mr. Justice Tracy. He lodged at your House?

Swetman. He lodged at my House.

Mr. Justice Tracy. When? About this Time that this Accident happen'd?

Swetman. Yes, my Lord: Though when he came to my House, I took him to be a pretty sensible Man. After a little Time, he grew very mad; and one Sunday Morning, he got up, and walk'd out with my Son up the Chapple-Hill, and when he was upon the Hill, he said to my Son, *Jo*, I won't come to your House.

Mr. Serj. Chesbire. Was you there?

Swetman. My Son told me so.

Mr. Serj. Chesbire. That won't do.

Swetman. He said he would not come to my House any more: It rain'd that Night, but he did come, and went to Bed. The next Day he went a walking, but I don't know where: At Night he came home; I heard him come home: About Nine, I desired him to come in, and go to Bed, because my Husband was not at home: He said, He come in, he would not come in, I had got Rogues hid in the House; and I said, No, Mr. Arnold, or Edward, or Ned, I can't tell which; he stepp'd over the way with such a Fury, and said, He would not come in to Night: I thought he should not come in to frighten me; I lock'd the outward Door; he had a Key, so had I, and I bolted the middle Door, that when he got in at the outward Door, he should come no further. At Two o'Clock in the Morning, he comes to the Door, and sat there 'till the Clock went Three, then he came in; I finding him there, got up, and open'd the middle Door; he went to Bed, said nothing to me, or I to him, but look'd out of Humour, in a wild, staring, distracted way: A little while after, my Husband came home, and as he sat by the Fire, he came to him; Stephen, says he, you are a pains-taking Man, but you have a bad Woman for your Wife, and he made me out as if I was naughty to my Husband; says he, She hath such Rackettings, and such Doings here; she hath had Men above Stairs, fed them with

Viſuals, and I could not rest for them. He said: He came down one Morning, and he saw a Hamper, and Bottles of Wine, standing upon the Dreſſer, as my Lord Onslow and I had drank out, and he had been there friggetting; and I was in a Passion; and my Husband said, I was to blame to take Notice of him; for we took him for a Madman.

Sometimes I have desired him to read a Chapter in the Bible, when my Husband hath been abroad, to pass away the Time, till my Husband hath come home, which he did sensibly: I desired him to read another, he did it very sensibly. Another Time, as he was sitting down on the Couch, by the Fire-Side, I see him look very wild, and I came to him, and said, Come take the Bible, and read, and put all these abominable, wicked, distracted Things out of your Mind; he gave me no Answer, but took the Bible out of my Hand, and look'd in it, and swore and rail'd, and said such Things as I am sure could not be in the Bible, and he look'd very wild, and very mad.

Mr. Serj. Chesbire. How long was this before this Accident happen'd?

Swetman. I can't tell how long, it was within the Time he was at my House.

Solicitor for the Prisoner. Please to ask her about the Rugg at her House.

Mr. Justice Tracy. What do you say relating to a Rugg?

Swetman. One Morning, in a raging Condition, I heard him swear, that he had pull'd my Rugg to pieces, and had stopp'd his Ears with it. When he came down Stairs, he came raving, and pulling the Stuff out of his Ears, and raving at the Bollies and Bolleroys, and I know not what, and said, The Bollies plagued him, and he thought my Lord Onslow plagued him.

Solicitor for the Prisoner. My Lord, I humbly beg the Favour, that she may be ask'd, relating to the Transaction that Morning, when this unhappy Accident happen'd, that she would give your Lordship an Account, if you please to ask her, whether he lay at home that Night, and what pass'd between her and her Son, relating to Mr. Waite's Conies? and whether she did not mention, that Mr. Waite would give Sixpence for every Coney they catch'd, because they eat his Turnips?

Mr. Justice Tracy. You would have me to ask these Questions? Did he lay at home that Night?

Swetman. My Lord, he did not lay at home that Night; I never heard nor see him till about Six o'Clock; he took a Basket of mine, and went to Guildford, and bought a Loaf, in the mean Time, I got up, and he, to the best of my Knowledge, ask'd me, whether I had seen or heard any thing of the Fox-Hounds? and I said, No, don't trouble me, I have something else to mind: That was in the Morning, after he came from Guildford.

Soll. Did you hear him say any thing about Waite's Conies?

Swetman. Yes; after he came home, he asked me if I had heard or seen any thing of the Fox-Hounds; and he looked sadly wild and indifferent. He went out of Doors, and came in again; sat down, and got up again, and was very untoward. My little Boy came in, and asked him, Whether he would go and shoot Mr. Waite's Conies? For my Boy said Mr.

Arnold



*Arnold* should shoot them, and he would bring them to him. And *Mr. Arnold* said, he had no Powder nor Shot, nor Money to buy any. And my Child said, I will go with you and ask my Mother. So *Mr. Arnold* asked me to lend him a Shilling; and I did lend him a Shilling's worth of Halfpence; and my Child wanted to go with him to *Guildford* to buy this Powder and Shot: I said, he should not go, but he should go to School; and *Mr. Arnold* was to go to *Guildford* and back again.

*Soll.* Did he borrow it to buy Powder and Shot?

*Sweetman.* He borrowed it to buy Powder and Shot, to shoot the Conies, so far as I know.

*Soll.* Did he give that as a Reason?

*Sweetman.* Yes; my Child was to go with him; and he was overjoyed that he was to go with him to shoot the Conies.

*Mr. Justice Tracy.* Then he went away, and came home again?

*Sweetman.* Yes.

*Mr. Justice Tracy.* How far do you live from *Guildford*?

*Sweetman.* About half a Mile. After he had got Powder and Shot, I see the Gun standing in one Corner in the Kitchen. At last I thought he had not a Mind to go and shoot the Conies. He was gone out of the Door; a Man and a Woman came and desired me to stand at my Door, there was a Horse and a Hamper coming by; I used to buy Fish of them as they went by. I desired *Mr. Arnold* to stand at the Door, while I went up to dress. I took it he would stand at the Door while this Horse and Hamper went by. To the best of my Knowledge, he said he would. I went up. Afterwards he came, and said, Are you coming down? I said, No: But I said, If you want to go, you may go. I thought him a trusty Steward. So he went away. I looked to see which way he went. He went up the Lane towards *Mr. Waite's* Turnip-field. Then I went away to dress my Head. I was but just gone, but I heard the Gun go off. Thinks I, This Man hath shot something in the Lane. When I looked, I saw some Gentlemen, and some Horses, and no body upon them. Then I thought he might have frightened the Horses, that they had thrown the Gentlemen. Immediately one came to me, and said, Dame, bring a Chair: Which I did. And I saw a Gentleman was shot: He was wounded, and bloody. Somebody said, Have you got some good Brandy, or fair Water? I went and fetched both. When I came again, I did not know that this was my Lord *Onslow*.

*Mr. Serj. Whitaker.* Had you heard him say any thing that Day, or before, threatening my Lord *Onslow*?

*Sweetman.* Yes; I have heard him say, he would kill my Lord *Onslow*.

*Soll. for the Prisoner.* And nobody else?

*Sweetman.* He hath said he would kill me; and he hath threatened to kill *Sentiman*; and he hath threatened to kill my Child; for you are plagued, and I am plagued, and your Child is bewitched, he said.

*Mr. Marsh.* Where did this Gun stand?

*Sweetman.* It stood sometimes in one Place, and sometimes in another.

*Soll. for the Prisoner.* I beg leave to examine

a Witness or two, to confirm this Witness's Evidence.

*Eleanor Arnold* called.

*Mr. Justice Tracy.* Did you hear what this Witness said?

*Eleanor Arnold.* Yes; she related the same thing to me.

*Mr. Justice Tracy.* How long ago?

*Eleanor Arnold.* About a Fortnight ago.

*Mary Arnold.* And she gave me the same Account.

*Mr. Copeland* sworn.

My Lord, I was with him in the *Marshalsea*. I asked him, What could induce him to murder my Lord *Onslow*? He made me little Answer at first; but at last he said, My Lord *Onslow* had bewitched him; and if he had any Money in his Pocket, he could not spend it in any Quiet; my Lord *Onslow* troubled him, and run in his Head, that he was never easy, nor never quiet. I ask'd him, Whether any body had put him upon this Action? And he hesitated pretty much at first, and afterwards he said, No; no body had put him upon it. I went afterwards once more to him in the *Marshalsea*, and I asked him again, Whether any body had put him upon doing this barbarous Action? And he said, That my Lord *Onslow* (the People had said,) was the Occasion of all the Troubles in the Nation; he said, that he could not have any Peace nor Quiet in himself in his own Mind; and he was in a great deal of Confusion. I could not tell what to make of it, that I could not but judge he was besides himself, mad I thought.

*Mr. Darby* sworn.

My Lord, by Command of my Lord *Onslow*, I several times called this Man to Examination.

*Mr. Serj. Chesbire.* My Lord, I submit it to your Lordship, Whether this Evidence ought to be permitted in this Case, as to this Man's Behaviour subsequent to the Fact; the Evidence antecedent to the Fact is very proper; but the subsequent, it is very likely, may be counterfeit.

*Mr. Justice Tracy.* It must be submitted to the Jury, as it appears to them, both before and after.

*Mr. Darby.* My Lord, by Command from my Lord *Onslow*, I called this Prisoner several times, to examine him, to see if I could find the true Cause why he did this Action. I have been with him by myself, with his Friends and his Brothers; but I could never get any tolerable Answer. He said, my Lord *Onslow* had bewitch'd him, and was a Trouble to him.

*Soll. for the Prisoner.* We have —

*Mr. Justice Tracy.* You have had an Indulgence, the greatest that ever was given before; but I would not stop you.

*Soll.* My Lord, I humbly submit it.

*Mr. Serj. Chesbire.* Will your Lordship please to favour me, by way of Reply, to take Notice of something?

*Mr. Justice Tracy.* You hinted something, I think, by a Question. You had one of the Witnesses asked, Whether this Man was in a Disguise? Do you believe there is any thing in that? If you assure me that *Mr. Hungerford* tells you there is any thing in that Matter, I will hear him.

*Mr.*

Mr. *Hungerford*. I can't tell what to say; I have looked over the Act of Parliament; I have it in my Hand.

Mr. Justice *Tracy*. I ask you, Whether you believe there is any thing in it?

Mr. *Hungerford*. I believe there is a great deal to be said for it. If this Man was not in Disguise, he is not within the Act of Parliament. As to the Attempt, never certainly was any thing more barbarous to that honourable Person. As to the Prisoner, here hath been all the Fairness human Nature can expect. I must say, that as to the Relations, they have had all the Kindness, and Indulgence. And as to the Matter, that is proper to be mentioned when we have gone through the Evidence on both Sides: I beg leave to do it very shortly.

Mr. Justice *Tracy*. Two things upon the common Rule of Construction: in the Repetition of the Words, or ——— doth not shew it to be two Clauses.

Mr. *Hungerford*. Your Lordship observes, that the Rule of interpreting all Acts of Parliament is, that of the Preamble, and that of the Title. I believe of late Years in the minutest Clause in an Act of Parliament there is something of it hinted at in the Title itself. Your Lordship will observe, the Title here is, *An Act of Parliament, &c.* My Lord, it can't be said, there is nothing of that Case provided for: If this is a Case, the Fact governs; that this Man must be in the Clause of the Act of Parliament, that this Person did maliciously shoot at, &c. It seems the first Part of the Preamble then, and the being in Disguise, runs thro' the whole: These Reasons give me some Hope that I shall be in the Opinion of the Court.

Again, in relation to his Majesty's Proclamation, which notifies the same Offences as are enumerated in this Act; I have here this very Proclamation; and it doth not notify it otherwise, than supposing being in Disguise; that is a Clause which governs the rest; and the Proclamation is a Rule for the Act of Parliament. The Act of Parliament goes no farther than the Proclamation, as to several Persons in Disguise, &c. So in the Proclamation there is this Expression, Being in disguised Habits, and Blacks. We reason, therefore, that no other Person is supposed to be criminal here. But when one puts a Case upon the Act that carries the utmost Absurdity along with it, as so it will be if this be allowed, if any Person that wilfully or maliciously shoots at another without being in Disguise, is to commit a Felony within this Act of Parliament. Supposing the Militia in their Exercise, two People go out to fight with Sword and Pistol, they both shoot at one another; neither is hurt; yet by this Act of Parliament both of them are Felons.

Mr. Justice *Tracy*. I dont think that. What do you think of the next Clause, Sending a Letter without any Name subscribed thereto, or, &c.

Mr. *Hungerford*. There is this Circumstance attending this Noble Lord's Case, that he is alive, and not killed by this Fact: And may he still live, to pursue the noble Purposes and Views the Serjeant hath mentioned. My Lord, this is the only thing I have to offer on this Occasion.

Mr. Justice *Tracy*. Because I knew I was to have this Cause come before me, I have had a Meeting of my Brethren, to have their Opinion

in relation to this Clause in the Act of Parliament. Every Judge was of Opinion, It is an intire Clause of itself, and it had no relation to the former Clause of being in Disguise, &c. So that there is nothing in this Objection. I was under no manner of Doubt myself before, but I was willing to have my Brothers Opinion.

Mr. *Bains*. It would be Presumption in me to offer any thing further, if it is the Opinion of all the Judges.

Mr. Justice *Tracy*. It is indeed; I did intimate it to Mr. *Hungerford*.

Mr. *Hungerford*. I humbly thank your Lordship for the Indulgence you have given me, and I wave it.

Mr. Serj. *Cbeshyre*. My Lord, I beg leave to take notice of the Evidence that hath been offered, and the Defence that hath been made on the behalf of the Prisoner; and as the Council have waved the Objection on the Indictment; and if they had known the Resolution of the Judges, it ought not to be renewed: But since they have waved it, and the Matter is so plain, the Matter now stands upon the Evidence; and I think, as it stands upon the King's Evidence, there can be nothing plainer, than that the Defendant is guilty of this wilful and malicious Shooting, as it is laid in the Indictment. Gentlemen, now I may say the Fact hath been proved to you in the proper way. The Act, the Manner of the Act, and the Behaviour after the Act: He did behave himself like a Lunatick; but I must submit it to you, whether there is any Appearance in his Behaviour like a distracted Man, so as to have the Protection of the Law. Gentlemen, that he designed this Act, you have Evidence of his coming to the Witness to have the biggest Shot; he never used to call for any but that Sort to kill Rabbits; but now he calls for the biggest Sort; he had a different Use for it than he used to have. The Preparation is very suitable to the Design; at that time his Behaviour is as usual; that he calls for the Powder and Shot, and pays for it, in the same Proportion as he used to do: There did not appear at that time any great Disorder in his Behaviour: As to the Fact, they that were present could find he was fullen; he went on, he took Aim as well as any body could; and his Behaviour afterwards, his Countenance was pale and livid, which shews Guilt, and Thoughts of Remorse, Anger, and Revenge. As to the Man's Case, upon their Evidence, they have made the Point very material, what Condition of Understanding and Sanity of Mind this Man had at this time. I must agree that a Man that is a Madman, a Lunatick at the Time, he can't in the Law be said to be guilty of Felony. When I have so far consented as this, that the other Side should see it is all of a piece with the Usage the Prisoner hath met with; but I must submit it to my Lord's Direction, whether they have given any Proof that the Man was at the Time, or before, a disordered Lunatick Man, deprived of his Senses by the Visitation of God Almighty. And as to the Rule of judging, it is not, that a Man acts like a Madman, and doth an Act that a Person in his right Reason ought not to do: No Man that kills another voluntarily, acts like a Man in the Use of his Reason: No Man that commits a Sin, a wilful Sin, can say that he acts with



Reason; he parts with his Reason: But consider what the Law says, That the Man that commits such an Act, is moved by the Instigation of the Devil; which is brought in there to shew the Horror of the Fact. And if the Man doth act as if the Devil moved him, and that no Man in his Senses and right Mind would do so; you must not interpret it, that every Man that acts thus is a Madman; then your Lives and Fortunes are all at Stake, and at the Mercy of a wicked Man. Every wicked Man acts by a malicious wilful Will. Therefore consider the Evidence given is of this Kind, and you can't blame them. I don't blame them; here are five of the Relations, two Brothers, two Sisters, and one Son-in-Law; that they should come and do all they can to save their Brother from hanging: It will be a Trouble to them, and a Disgrace. Notwithstanding, now they swear that they have always looked upon him to be Lunatick, and deprived of his Senses; it is impossible to believe them to be in earnest, and to have acted like honest Persons themselves; and the like of *Sweetman*; and, which brings I think nine or ten of their Witnesses under this Consideration, Is it possible that these People believed and thought what they now swear, and they tell you for the Years they have known of him; and because they have looked upon him as a mad, distracted Person, deprived of the Use of his Reason: None of them have done any thing to restrain this Man, to prevent him from doing any Mischief; and they tell you the Reason is, they feared no Ill of the Man: The Account they have given of him is, that he was an untoward wicked Boy; and as he grew up to be a Man, he still grew more wicked; so that he rather appears to have been a wicked Man, than a Madman: Consider therefore if they are to be believed. He was designed to be put Apprentice in *London*; but he ran away: They afterwards put him to a Brewer, or intended it: Did they tell the Persons they put him to, We would have you take him, he is mad? They would have sent him into *Yorkshire*; the Boy would not go: So that he would not settle any where. Is that the Sign of a Madman? No, of a naughty, roving Head; and if all your Sons and Servants are mad that act thus, upon my Life you will cut off a great Part of Mankind. Consider how they used him; they have complained of him as a wicked Man, and they would put him in Terror; We will make you do so and so; and they did send him for a Soldier. Have you heard that the Man was discharged out of the King's Service, because he was a Madman? No, he ran away; no body but what is satisfied but that the Man had Capacity, if he had had Diligence, but was an idle, roving Man. The Provision made by the Father, and constantly paid him by the Son, shews him to be in his right Mind: He was a Spendthrift; his Money would not last; he ran a Score; which shews him a bad Husband: But is it possible, that if the Father had looked upon him as a Madman, he would not have directed some Care to be taken of him, as such? Would this Brother that pays him twenty Pounds a Year, and the Man remember the Return of the Period, as fast as it comes? Did he withhold it, and say, You are not fitted to be trusted? Says he, I want it; therefore let me have it. Is it not proper? Why if you

must have it, give me your Receipt, here is your Money. Would he not reply, You are not fit to be trusted; we will see your Taylor, and pay him; we will see your Score, and see you are not imposed on? This is proper, if a Man was void of Reason; but as soon as the Quarter comes, he comes for his Money; they pay him, and take his Receipt. Therefore consider, Gentlemen, whether their Actions don't falsify their Oath: They say, It is a great Trouble to have such a Brother; we have offered and endeavoured to make all the Satisfaction we can: But we desire to save his Life; and we can't do it by any Act but these things which we swear, and our Actions will contradict.

It would not become me to run through the Particular of every Witness; I shall only take Notice, that not one of those, whether Relations or Persons acquainted, that they ever applied to any Person to have some Course taken with him, as a Lunatick, or a Madman. You know there are Methods to be used in Spring, and Fall, and Summer Time: Have you found that this Person hath ever been let Blood? Hath any thing been done towards his Recovery? I don't find there hath. Consider, Gentlemen, that these People that have a Brother, if they would have it believed that he is thus deprived of his Senses, whether they would have dealt with him as they have done.

They sent Mr. *Woodward* the Minister to him to reclaim him, to reform him; he had been abusing his Sister, beating her with a Stick: The Parson comes to him, admonishes him; tells them afterwards, I have said proper Things to him; but he is fitter for a Doctor than for me. Did they themselves believe this, and would they not have taken the Hint? No.

If in case a Man that hath led a vicious Life, been a fullen, morose Man, would curse by himself, and would live by himself, if that Man would work himself to do an ill Action, this Man is mad, and hath been so for twelve Years, though no body can say he was so before. He looks otherwise to day than he did yesterday; and very likely he may have been instructed by his Solicitor and Friends. I don't impute any thing to any body; but it is a very convenient Art for a vicious Person to make use of.

He was always left to himself, never confined, or any Commission of Lunacy taken out. The Law is now for any Justice of Peace to have Power to confine such a Person: It is dangerous for all Men; it would be to have the Lives of all Persons in their Power.

It is very remarkable, that this Man had the Use of a Gun, most of them speak for a great many Years last past; he had it in his Father's Time: It seems he was a good Marksman; he used to shoot Rabbits. The Witness said he bought three Pounds of Shot at a time: He had no Gun of his own; the Man had the Use of the Gun but at the time when the Man himself took it with him when he was gone a Malting. Don't you think these were wise People to let him do so, if they thought him a Madman; they would not have trusted these Arms for him to have Access to, when they were told that Morning the Man was gone to buy Powder and Ball, if they looked upon him as a frantick Man, sure they ought to remove those Instruments of Mischief out of his way; so that it should not have been in his Power

to do what he did do. The Fact is a Question you will take into Consideration.

My Lord, we shall shew first this Man's Examination, notwithstanding he was afterwards fullen; and as he expresses it, What doth my Lord send his Fools after me?

What is put down in Writing is what we shall lay before your Lordship, subscribed by his own Name: Notwithstanding they would have it that he is entirely deprived of Reason, your Lordship will find some Letters writ by himself, taking Notice of the Difficulties he was under, that the People took his Cloaths from him; it was easier for him to die, rather than live in such unhappy Circumstances; and desires to be brought to his Trial: This was during his Confinement, and is very proper for your Consideration; and for these People to come to swear he is a Madman, and the Man to look so too, is very surprising. We will lay this Matter before you, together with a Witness or two, and shall submit the whole to your Lordship's Direction.

Mr. Serj. *Whitaker*. My Lord, I beg one Word by way of Reply. They have given some Account of his Behaviour since his Confinement. Gentlemen, I can't but take Notice of his Behaviour at the Bar, when this Man hath been spoke to, whether he hath not behaved himself as a Man of Sense would do that had done an Injury; and when he was asked what he had to say, whether he did not give a rational and sensible Answer; as I take it, he said he was sorry for the ill Act he had done.

What can the most rational Man, if he hath been in an ill Act, say, after he hath done it, but he is sorry for it? I believe every Man that has done an ill Act, and is sorry for it, is a rational Man.

Then, my Lord, they give an Account how he behaved himself after this Fact; and there hath nothing been proved of any Remorse, but a fullen Behaviour. When Mr. *Allen* was with him, his Behaviour was fullen; that agrees with all Accounts that have been given. Then we shall call one Witness, who will give you an Account of his Behaviour in the *Marshalsea*; which is introductory to two or three Papers, which we shall give in Evidence; What need my Lord to send his Fools after me? &c. For a Man to do this, and then to say he is out of his Senses!

As to what Mr. *Darby* says, that the Man was always fullen when he came to talk with him; if this be a Proof of his Insanity, it is rather a Proof that he understood himself very well, and had his Senses: There is no Reason to say that this Man was a Madman, and the Law will excuse him from being a Criminal. This is all I shall trouble your Lordship with: We will call our Witnesses, and then submit it to your Lordship's Direction.

Mr. Serj. *Comyns*. If your Lordship please to indulge me a very short Word relating to the Construction of this Act of Parliament; there is no Foundation of any Doubt on the Construction of this Act, and the Intent and Design of it.

Mr. Justice *Tracy*. Another thing more material; It was adjudged so in the *King's Bench*, and so entirely given up, that there was not the least Doubt.

Mr. Serj. *Comyns*. My Lord, therefore the thing to be considered in the Evidence is, Whe-

ther it is a Proof of any Offence within the Words of this Act of Parliament. If this unhappy Attempt had went so far as the Noble Lord had died, I believe it is hardly to be imagined that any Evidence given here would have been though sufficient Ground to have excused the Person guilty from the Punishment of the Law.

Then in case, (as now) he recovers of those Wounds, that creates a Sort of Tenderneſs and Compassion, where the Consequence is not altogether so direful; and that may suppose the Person to be regarded with more Tenderneſs than in another Case: But the Case is the same in one as in the other Case; and therefore he that doth the Act wilfully and maliciously, &c. is guilty within this Act of Parliament. If a Person have no Mind, he can be capable of no malicious Design: Therefore we humbly submit that must be the Evidence to excuse the Person, That he had no Malice or Design in the Attempt made on this Noble Lord: But if upon the Evidence it appears, that he acted with Design, with Deliberation, with Sedulity, and a long fixed designed Malice, and there is no Evidence of Insanity that can shew he had no Malice to excuse him; then he is guilty within this Act.

Mr. Serj. *Darnell*. My Lord, I am very unwilling to take up any more of your Lordship's Time: I apprehend, the Insanity of the Man must be reckon'd at the Time he doth the Fact; if he hath Intervals, and kills a Man in those Intervals, he is as much subject to the Law as any other Man; therefore taking it all to be true, that the Man is sometimes out of his Senses, it will then fall under this Consideration, Whether at the Time that he did this Fact, it was not in his Intervals? and if so, he must suffer the Law. My Lord, the Evidence hath made it manifest, that he was in a Capacity of acting that Morning, employ'd to buy Shot, employ'd to do a Work, to get Money; he doth buy Shot, distinguishes the Sort of Shot, a bigger Sort than ordinary. In the Morning of that Day, the People thought him capable to be entrusted with Money, and to be employ'd, &c. sure the People that thus employ'd and entrusted him, look'd upon him that Day to be in his right Understanding: Taking that singly, if at that Time he was really in his Senses, he is subject to the Law. My Lord, it is very odd to hear so many Relations come into Court, and confess themselves guilty of the wickedest Practice; they say, they apprehended he would set the House on fire, do Mischief, and yet suffer'd him to go abroad. Some say, they did not fear him, but they look'd upon him as a Madman; therefore not to secure him, it is matter of Censure to all those Relations, to look upon him to be mad, and yet take no Care to confine him, or to cure him. I don't find one single Instance to assist him with any Care for a Cure; therefore we hope, on the Representation of the Relations, this Man is not such a Person, as to be excused from the Law. I think it is very much to be weigh'd in the Breast of the Jury, whether this Man is not a Warning to every wicked Person, and a Caution to Relations, that they should have Regard to such a Person. It is a very sorry Account to be given, when a near Relation is under these Circumstances, to say, It is our Relation hath done it, pray don't convict him, though we have let him go abroad in the World, though we knew he was out of his Senses:



Senses: This strikes deep in their own Conduct, whatever be the Event of this Trial. But I think there is sufficient Proof, that this Man should be brought in in the same manner as every body else is; that is in his Senses.

Mr. *Marsh*. This Trial hath held too long for me to add any thing to take up more of your Lordship's Time; I only beg Leave to take Notice; that I think it is very extraordinary in these Relations; that they should not take Care, when they apprehended him to be mad, to secure him: I don't apprehend that he was at a Distance from any of them; but as to Two of the Sisters, that lived in the Town where this Man every Day came, in the Neighbourhood of *Guildford*, they say, they lived there three Years, and give several Instances of his Insanity: It don't appear they ever sent any Person to him; to let him Blood, or to give him any Advice, or Physick; that doth not only make them Blame-worthy, but, I apprehend, makes the Evidence they have given of his Insanity incredible, as coming from them, because it is hardly credible he should be so, and they not take that Care of him as they ought. They own that they knew he used to go out a shooting, and had desperate Weapons; they never sent any body that went after him. Some of the Witnesses go to represent him as incapable of any sensible Action, for a great many Years, and therefore he is set at the Bar in a Figure different from the rest of Mankind: But even here, when they talk of the Posture of his carrying his Gun, he says upon that, he hath often had his Gun go off in his Hand, but never had the Accident before. This Man they are setting to the Jury as a Man of Pity, of Compassion, capable of Compassion. Another Time, he said, his Shot was Rabbit-Shot. The Behaviour of him, notwithstanding he is set, and put in that Form, will not have that Influence upon, but that if you are satisfied he hath done the Fact, you will find him Guilty.

Mr. Serj. *Cbesbyre*. I beg your Lordship's Leave to call a Witness or two: There is one remarkable Passage your Lordship will hear from the Witnesses: This was design'd as a Recognition of this Fact, with respect to my Lord *Onslow*, when it was finish'd, they had thrown the Ink upon it, instead of the Sand, says he, It is an ugly Accident, it must be writ over again, you had better stay 'till it be writ over again. I only offer'd it as a Paper sign'd with these Circumstances, to show his Behaviour.

Barwell Smith *sworn*.

Mr. Serj. *Cbesbyre*. Did you see him sign that Paper?

Mr. *Smith*. Yes, I see him sign it.

Mr. Serj. *Cbesbyre*. Who writ it?

Mr. *Smith*. I writ it.

Mr. Serj. *Cbesbyre*. I'll ask you, did he dictate to you, as you writ it?

Mr. *Smith*. I took it from his Mouth, as nearly as I could.

Mr. Serj. *Cbesbyre*. What is the Import of it?

Mr. *Smith*. It is a State of the Case of what he had done to my Lord *Onslow*, and how he came to do it.

Mr. Serj. *Cbesbyre*. You took it fairly from his Mouth?

Mr. *Smith*. I did; it was read to him twice, and he read it afterwards.

Mr. Serj. *Cbesbyre*. Did he sign it?

Mr. *Smith*. Yes.

Mr. Serj. *Cbesbyre*. You observe some Ink fallen upon it?

Mr. *Smith*. After he had sign'd it, I went to put some Sand upon it, and in Mistake, I took up the Ink, and turn'd it up instead of the Sand.

Mr. Serj. *Cbesbyre*. What did he say?

Mr. *Smith*. As soon as I had done it, he said, Why you have blotted it so, that it can't be read, it must be writ over again: No, says I, I believe not, if you think it will signify; he then said, Pray do all you can in your Power, use your Endeavour with my Lord *Onslow*, to have his Fetters taken off, for they were very grievous to him. There was one of the Keepers in the Room, and I desired him to take Notice, it was his own voluntary Deed.

Mr. Serj. *Cbesbyre*. Look upon those Papers.

Mr. *Smith*. He writ that Letter, and I gave it to my Lord *Onslow*: I sat by him, and see him write.

Mr. Serj. *Cbesbyre*. Look upon that other Letter.

Mr. *Smith*. I did not see him write this.

Mr. Serj. *Cbesbyre*. You take it to be his Handwriting?

Mr. *Smith*. Yes, I take it to be his Handwriting.

*The blotted Paper read.*

*Clerk reads. Edward Arnold, now in the Marshalsea, &c.*

Mr. Justice *Tracy*. Did he put his Name to it himself?

Mr. *Smith*. Yes, he did, he desired he might: It was read over to him, and he said, I must sign it; Yes, if you will, but do not sign it, if there is any thing in it that is not right.

*The Letter produced, dated January 25, 1723.*

Mr. *Smith*. This I see him write; he writ it himself, without my saying one Word to him.

*Clerk reads. — To the Reverend the Lord Onslow, &c.*

*Clerk reads the other Letter.* My Prayer to your Honour is, that you would send or write Word, which way, &c.

Mr. *Coe sworn*.

Mr. Serj. *Cbesbyre*. Sir, will you give my Lord and the Jury an Account, whether you was with him while he was a Prisoner at any Time during his Confinement? and what pass'd between you? What Discourse? and how you apprehended him to be by his Behaviour? Whether he had the Use of his Understanding, for a Man under such a Load of Guilt?

Mr. *Coe*. I went, the Day he committed the Fact, to see him, at the House of Correction: I had been up to see my Lord *Onslow*, and then I went to see him.

Mr. Justice *Tracy*. What Time was it?

Mr. *Coe*. About Ten or Eleven o'Clock: Then, my Lord, he sat quite double, and did not speak a Word. I went the next Day, and he was brought into a Room; he seem'd under a Confusion, but not Lunatick; under a Horror of Guilt, but no Remorse; says I, What could induce you to do this Fact? Says he, My Lord *Onslow* is the Plague, the Occasion of all the Plagues and Troubles in the Country: Who told you so? A hundred People say so, the very Boys in the Street cry out of my Lord *Onslow*. I ask'd him Questions several Times, but it was very difficult to get Things out of him; he spake low to himself, and you ask several Times, before you get an Answer, and when he did answer, it

it was always rational. He would rail at my Lord *Onslow*, and that he was the Occasion of all our Plagues and Troubles, and a Man of evil Devices. Says I, Are you not afraid to suffer Death? Says he, It is better to die, than to live miserably. I went to see him the next Day: I ask'd him, Did you intend to kill my Lord *Onslow*? He had a dreaming way of speaking; Yes, to be sure. I said, Where did you intend to hit my Lord? Says he, When I shoot at a Rabbit, I always aim at his Head.

Mr. Serj. *Chefhyre*. Did he desire you to say any thing to my Lord?

Mr. *Coe*. I went afterwards to see him, when he was in the *Marshallsea*; he was very ill; I ask'd for him, and the Man in the Bar brought him to me: I ask'd him if he could drink some White-wine; says he, The White-wine here is too sharp for my Stomach; then I call'd for some Sack, and he had it. I ask'd him how he did, and he held down his Head, and said, In a bad Condition. I said to his Keeper, I believ'd he would die, he should have some Care taken of him; the Keeper said, It was common: The Prisoner said, These Irons are very heavy and troublesome, and sat down in a Chair, very ill. He desired me to speak to my Lord, and tell him how he was iron'd, and they used him. I did speak to my Lord, and afterwards came to see him again, which was on the Twenty-ninth of *October*, my Lord Mayor's Day: I remember the Day, because I see my Lord Mayor, and the Companies, going to *Westminster* by Water. I told him really, It is a hard Case, that a Man of such a good Family should suffer so, you ought to declare all that you know; it is an odd Thing to hate a Man *extempore*; if you know any body that set you upon this, you ought to declare who it is; but have a Care you don't accuse the Innocent: But he never did name any body to me, but he told me, I have sign'd a Paper, what is in that Paper is true: I press'd him to tell me the Truth, but he said at last, If my Lord *Onslow* will come here himself, let him, but let him send no more of his Fools after me.

Mr. Serj. *Chefhyre*. Have you any Reason to believe that he wanted the Use of his Understanding?

Mr. *Coe*. No; I went to School with him; we were in the same Class together: He was a strange sullen Boy, such a Boy I never saw the like of him before, which made me, when I left School, that I never spoke to him since, till about two Years ago, and as I was going up the Hill, I see him have a Perch by the Tail; I ask'd him, what he would have for it, he ask'd a Shilling for it; I told him, I would give him Sixpence, and a Pint of Ale: No, says he, it is honestly worth a Shilling, and a Shilling I will have.

Mr. Serj. *Chefhyre*. How long ago is this?

Mr. *Coe*. *Christmas* was two Years.

Mr. Serj. *Chefhyre*. You form'd a Notion of him from a School-boy, that he was a malicious, surly Fellow?

Mr. *Coe*. I did: I really thought, such a Temper as he set out with, must produce such a Man as he appears to be.

Mr. Justice *Tracy*. He did behave himself last Night when he pleaded, calmly, and as much in his Senses as any body.

Gentlemen of the Jury,

This *Edward Arnold*, this unhappy Person, is indicted for a great Offence: The Law,

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on which the Indictment is grounded, is an Act of Parliament that pass'd the last Session of Parliament, and is entitled, *An Act*, &c. which is conformable to the antient Law of this Kingdom, but that Law hath been discontinued; if any Man did assault another, though Death did not ensue, it was made Felony, by the antient Law of the Kingdom; but the Law is since altered, and it was not so, till this Act of Parliament was made. This is to show you, that though it is a new Law, it is just, and he that hath

not of the Reason of Law: All Laws are of equal Force, till repeal'd, have the same Power, but when they are repeal'd, they are no further to be considered. There can't be a more horrid and wicked Thing intended in the Design of it, than maliciously to shoot a Man.

To prove this Indictment, they have called a great many Witnesses: The first Witness they call is Mr. *Flutter*. This happen'd to be done on the Twentieth of *August* last, in the Parish of *St. Nicholas*, near *Katharine-Hill*, as he was coming from Hunting with my Lord *Onslow*. When they came into a narrow Lane, near *Katharine-Hill*, he saw this Man coming towards them, to meet them, with his Gun in his Hand, and he observed his Gun was cock'd, and he said he look'd upon him, and his Countenance was changed, and he look'd pale, like a Man that had some great Concern upon him; he observed and ask'd him the Reason of his carrying his Gun in that Manner, but he made no Answer, went on, cursing as he went, and when he pass'd them, he immediately turn'd short, shot my Lord *Onslow*, knock'd him off his Horse, and he fell from his Horse upon his Face. This is the Description he gives of the Fact. He is then ask'd, Whether ever the Prisoner was reputed a Madman, or distracted, or lunatick? For you are to understand, that *that* is the main Point in this Case, and what the Prisoner hath for his Defence: And the Witness says, he never heard of his being mad, or his being reputed to be mad, or out of his Senses, notwithstanding he lives at *Guildford*, and this Prisoner lives very near him. At the same Time he says, that he knew very little of him; so that what he says, as to that, is not of great Weight. I told the Prisoner, as any Witness came to be examin'd, if he would have them ask'd any Questions, I would ask them for him: Instead of asking the Witness a Question, he said, He pass'd that way every Day, and he was sorry for what was done.

Mr. *Parsons* is the next Witness; he says he was very near my Lord *Onslow*, when this Accident happen'd. He gives you much the same Account as the other Witness did, only adds, that he presented his Piece, took Aim, and shot at my Lord *Onslow*: The Event of the shooting, he describes in the same Manner as the other Witness doth; so upon that, the Man went on, and he follow'd him, the Witness follow'd him, and told him, he had kill'd my Lord *Onslow*, and he would be hang'd for it; What, says he, I shall not be hang'd to Day, and he would have charged again; with what Intent you are to judge of upon the Circumstances of the Case. The Prisoner was brought back to my Lord, and on Sight of him, my Lord said, You Villain, you have kill'd me: The Witness thought

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he had a Design to fall on my Lord *Onslow* again, that is uncertain; his Gun was taken from him, but he apprehended something of that kind, and that he intended some further Mischief against my Lord *Onslow*. He said, When he shot, he aim'd at my Lord's Head, but the Wound was only in his Shoulder: And the Prisoner being ask'd, if he had any Questions to ask this Witness, said, He did not know what to say. This Gentleman says, he never took the Prisoner to be a Madman, but a sullen morose Fellow, and he used to go a Shooting, and a Fishing.

Another Witness is Mr. *Fawks*; he says, he was with my Lord *Onslow*, and saw the Prisoner coming up, and he told Mr. *Parsons*, that he believed he had some Design against him; for, not long before, he had taken away his Horse, in the manner he describes. It is not material to run through all the Particulars, and he did not know, but he had a Design upon him; he look'd very stern, and after he had pass'd my Lord, he immediately turn'd round, and shot, as you have heard. He was ask'd, How he could see at that Distance, when he was behind my Lord, in the same Tract? so that my Lord must be between him and the Prisoner. He said, My Lord and he were in the Horse Tract, and the Prisoner was in the Foot Way, which was a different Tract. This Witness is ask'd, Whether he took him for a Madman, or a Lunatick? Gentlemen, he says likewise the same as the other Witness, That he always was a surly, a morose Fellow, and did not care to talk, but he did not take him to be a Madman: The Prisoner then said, He had often had his Gun go off in his Hand, but never had such an Accident before. When this Witness ask'd the Prisoner, Why he did not shoot him, because he had talk'd to him about running away with his Horse, rather than my Lord *Onslow*? he said, You are an innocent Man.

The next Witness is one Mrs. *Smith*: She says, he came to her Shop that Morning as my Lord *Onslow* was shot, to buy some Powder and Shot; and when her Daughter came and asked him what Size Shot he would have, he said, The biggest they had; but the Daughter came and told her they had none of that in the Drawer: then she bid her give the second Size, No. 2. which she did, and he paid her for it. This Witness tells you, he had been a very good Customer; and that the Shot he usually had was another Sort; and he never ask'd for, or had, this big Sort before. That shews, Gentlemen, and from whence they would infer, and it is fit for you to consider, whether he had not some more than ordinary Design, greater than what was usual when he went to kill Rabbits; which is a thing much relied upon in the Course of this Trial. When he is asked if he will ask this Witness any Question, he says he hath several times bought Shot of her; and she is asked whether she took him for a Madman, she says she always took him to be as sensible, by his Dealings with her upon the Account of what he bought, as any body; and that he never had any of the biggest Shot before: She tells you he paid for it as he used to do. And this Prisoner on this Occasion owns, that he had often bought of her Powder and Shot frequently.

The next Witness is *William Smith*: He says he met the Prisoner, and the Prisoner asked him if my Lord *Onslow* went a Fox-Hunting. This

Witness was asked whether he looked upon him to be distracted; he said, No, he never did. Sometimes he went out a fishing with him; sometimes he would talk very well, and sometimes not give him a Word; that he was a morose, sullen Man: He says he was a great Fisher, but his Tackle was strong, a coarse gaming sort of Tackle; he was no great Artist at it; and that he often shot Rabbits.

The next Witness is *John Sturt*: He says he saw the Prisoner the same Day, and he asked him if my Lord *Onslow*'s Hounds were out a hunting; he told him he did not know; he fell a cursing and a damning my Lord *Onslow*, and said, if he saw him he would shoot him. This was about two Stones Throw from the Place where this Accident happened. He said he hath several times seen him a shooting with a Gun, very often. He was asked whether he took him to be a Madman; he said he never talked much Sense, and he would often rail, and curse, and swear to himself: Then the Prisoner said himself he never swore; the Prisoner observed it upon that Occasion, that he never swore; and the Witness says that he took him that Morning to be in Drink; and when he was asked whether he took him to be distracted, he said he did not take him to be sober, he was not right in his Senses, he would talk and swear so much to himself.

The next Witness is *John White*: He says he saw the Prisoner that Day; he says he heard his Gun go off, and he came afterwards into a Publick House where he was, and the Witness asked the Prisoner if he had shot a Rabbit; he told him he had shot nothing, it was only to discharge his Gun: From whence they make an Observation for the King, Why should he discharge his Gun, unless it was that he might be more sure of its going off when he charged it again? for it might be wet and damp by lying by: That shews his Reason and his Judgment, if he did this; it shews it was not the Effect of sudden Rage and Distraction, but a premeditated thing, laid with Design and Artifice, and that he had the Use of his Senses and his Reason: If that was the Cause of his discharging his Gun, though no Reason is given for it; And what Reason could it be? for they do not offer any Reason, unless it was to secure it that the Gun should go off; for it having remained charged some time before, it may be moist, and so would not go off: Whether he discharged it for that Reason, I must leave that to you; he only said he had discharged it. This Witness says, he was at that time in a very serene Temper, and he never took him to be mad or distracted: He was cunning in all his Dealings with him. This Witness was a Taylor, and had Dealings with him as a Taylor for some time; he said he paid him very honestly and well, but he was always very hard: He says when he was once with the Prisoner before this Accident, and the Prisoner asked him what sort of a Man my Lord *Onslow* was, and what my Lady *Onslow* was; the Witness gave them both a good Character, and speaking of my Lady that she was a good Woman, says the Prisoner, Why don't she cut my Lord *Onslow*'s Throat? He says he used to shoot Rabbits; and afterwards he went to see him when he was in the House of Correction, and he ask'd him what the People said; and he said the Vogue of the People at *Guildford* was, that

that he would be hanged; and his Friends were much grieved and concerned for him: The Prisoner said he desired no body should be concerned for him. This Witness once told him my Lord was dead; says he, If he is dead, I can't help it.

Gentlemen, the next Witness is Mr. Allen: And he tells you, that soon after this Fact was done, the same Day he went to him to the House of Correction, and examined him; and that he found him in a very sullen Mood, and he could get nothing out of him a long time: At last with some Persuasion he expressed himself thus; I don't trouble my Lord Onslow; pray don't trouble me. He went again the next Day, and then he asked him several Questions; but he ran on with Vehemence against my Lord Onslow, as the Author of all the Tumults, Disturbances, and Confusions, and wicked Devices that had happened in the Country. This Witness being asked, whether he had declared that he was mad after this Examination; he said in Answer to that, that he met with the Prisoner's two Sisters, who ask'd him of this Matter, they asked him if he did not believe their Brother was mad; he said, it was the best thing they could say for him, to say that he was mad; he said the Prisoner behaved himself very oddly, but positively he never declared that he was mad; he told him he was willing to die, and why did they not kill him? That talking to him further of this Matter, he asked him if he had any long, deliberate Intention to kill my Lord Onslow, and if he had communicated his Design to any Persons, or any Persons had encouraged him in it; he named two Persons, but they were not named by the Witness, because it might turn to their Prejudice one way or other; but it was asked whether or no they were my Lord Onslow's Friends or his Enemies: He said, on his then further endeavouring to find out the bottom of the Matter, on the Prisoner's declaring that such Persons had set him on work; the Prisoner then intending to sink back, said, he would not bring his Friends into Trouble. These are the Discourses of a prudent Man, a Man that hath the full Use of his Understanding: No Man talks in a more reasonable way than this. I told you the two Persons were not named on Debate; it was determined the Witness should not name who those two Persons were, but should declare whether they were Enemies or Friends to my Lord Onslow; he declared they were my Lord Onslow's bitter Enemies. This Witness gave you a long Account of this Matter; he said he had reduced it into Writing; which was the Reason that he so well remembered it; and that made him so very particular.

Upon this the Council for the King they stopped, and left the Matter here. Then the Prisoner being asked what he had to say for himself, he was a good while before he spoke; but what he said was to this Purpose; If he was guilty of any Fault, he was sorry for it; but he did not know what to say. This is the Substance of what he said.

Then, Gentlemen, they have been indulged with all the Favour as can be; and to do Right to this Prosecution, and the Council for the King, because there hath been an Affidavit sworn, that he is not perfect in his Senses; they gave

Liberty to another Person to call the Witnesses, and put what Questions they pleased; they have had all the Favour and Indulgence imaginable; therefore it is fit to be taken Notice of, for the Honour of this Prosecution, that every thing hath appeared fair to the Country, and they may judge of it.

They have produced a great many Witnesses: The first is *Nathaniel Arnold*; he speaks it positively, and says, he knows him to be a Madman; his Father had tried to put him Apprentice to several Places, but he would not stay: Once he came to see the Witness at *London*, but he would not stay; then he sent him a Ship-board, in order to go into *Yorkshire*; but he would not stay: Afterwards he looked upon him as an unaccountable Man; and his Father dying, he left a reasonable Subsistence to keep him from starving, Twenty Pounds a Year; and that was paid him quarterly by this Witness: Sometimes he was so distracted that he would lay out all Night upon Hay-Ricks, though he might have come home and laid on a good Bed; that the Prisoner lives by himself, but hath no manner of Convenience about him: This Man expresses it in general, that he believes him to be a Madman, and always acted like a Madman; though he says he was not so much a Madman as to be chained and tied up: He says he never had a Letter from him; but he could write, and he would press him often for Money as Quarter-Day came.

The next Witness is another Brother, *William Arnold*: He says his Brother was always distracted, and not in his Senses, though not always in so sad Condition as at other times; he would curse and swear very frequently: In his Father's Time he would curse him, and call him wicked and abominable Names, and then burst out into a Laughter.

He says his Father left him Twenty Pounds a Year; he was always ready for his Quarterage, for he would run a Score, and the People would dun him. He says, the tenth of *July* the Prisoner came to his House in *London*, and told him he could never be easy, for my Lord Onslow had bewitched him; and he looked wilder than he used to look; and he gave him Money to go home.

And in his Father's Time he would abuse his Father; who, at the Request and Advice of his Neighbours, applied to the late Lord Onslow, who had him sent for a Marine to the *Baltick*; but he did not stay, but came home again: And when he misbehaved himself, People would tell him, my Lord Onslow would send him again for a Soldier. The Witness is asked, if he did not hear that he ever threatened the Life of my Lord Onslow, or say any thing he would do; he tells you he doth not know or remember he did.

Another Witness is *Mary Arnold*, the Wife of *Nathaniel Arnold*: She says, she hath seen him often in great Disorders, and hath seen him distracted; she hath known him several Years, and never heard him speak six Words of Sense together. He struck his Sister so dangerously with a Stick he threw at her, that she feared she would have lost the Sight of one of her Eyes; she reproved him, and he laughed at her for it; and at Table he did not sit or feed himself as other People did: She never heard he hurt any body. About a Month before this Accident happened to



to my Lord *Onslow*, the Prisoner came to her House in a great Confusion; and told her he was bewitched by my Lord *Onslow*; and he said the Imps danced in his Room, and he could not lie in his Bed for them; and that the Devil did tempt him, and the Imps stood by his Bed-side; that to the best of her Knowledge she never heard him say any thing about my Lord *Onslow* before, or of the Design he had against him.

The next Witness is *Eleanor Arnold*, his Sister: She says, the Prisoner hath been distracted for more than seven Years ago, and in all that Time was not capable of forming any Design: She says, that the twentieth of last *August* he came to the Parish-Church, and behaved himself in such a Manner that they all talked of him, as if he was a distracted Person; and she contradicts what Mr. *Allen* said, and doth say that Mr. *Allen* told her, after the Examination, which Mr. *Allen* hath mentioned to you, that he was a distracted Person at that time, and that was his Opinion; that he would for Hours together talk Nonsense, and curse and swear, and he would give no Reason for it: She said he would sometimes make a great Fire in the Parlour when no Person hath been there, as if he would fire the House; she hath known him throw burning Coals on his Father's Plate when he was alive, and he would fall often into sudden Fits of Laughter: Sometimes she was afraid he would do Mischief to himself; yet no Care is taken of him.

Another Sister tells you, she thought him distracted and mad, though not so much as of late; and gives you several Instances: She says, his swearing and cursing to himself, and his sudden Fits of Laughter, and his talking to inhuman Creatures, was in a different Manner from what other People did; she mentions the same thing about his going to the Church, and the Opinion and Observation the People made on his Behaviour, that they could not imagine but he was mad. This Sister says, that Mr. *Allen* did tell her he was distracted and mad; and she owns she was the Person that was struck by this Man; and she says she never gave him any Provocation for doing it.

Another Witness is *Gittings*: She tells you she always took him for a Lunatick, and this for nine Years past: She says as the other Witnesses say, that he would talk to himself, and swear and curse without any Provocation: She speaks as to last *March*, and that was the first time, and not before; she says that he seemed very much disturbed, and declared, and often complained, that he was plagued by my Lord *Onslow* and his Imps: And in *May* last he had hurt his Arms, and she went to one Mr. *Howard*, who was a Surgeon, who applied a Plaister to his Arm; but the next Morning, when the Man came to dress it, he had thrown the Plaister and Things about the Room, and said to the Man, that he would make Issues in his Arm. Then he complained that Mr. *Waite's* Rooks disturbed him; then after he had ceased to talk of this, he soon began again to talk of my Lord *Onslow's* plaguing him Day and Night: She says she saw the Prisoner in Goal the twenty-third of last Month in the *Marshalsea*, and that he was in great Disorder; and then she asked him how he came to do such a wicked thing, and that he gave her little or no Answer that she could make any thing of; and she asked him if any body had set

him to do it, and who; and he told her it was one *Sweetman*, and *Thomas Farmer*, two little Boys, one about ten, and the other about eleven Years old; and she says he told her there were great Plagues in the World, and there would be great Mourning and Lamentation. These are Instances she gives of his Madness.

The next Witness is *Mary Martin*; and she says that she heard him declare that my Lord *Onslow* was in his Belly; and I think she says they appointed a Time to go to my Lord *Onslow*, which was the next Morning; and that he opened his Breast, and cursed and swore, and said my Lord *Onslow* was in his Bosom, and he could neither eat, nor drink, nor sleep, nor be at Rest, for him.

The next Witness, *Sweetman*, tells you that the Prisoner was a crazy Fellow, and not always in his Senses; that he lodged at his House fifteen Months before this Accident happened, therefore could speak more particularly as to him.

The Witness tells you that he used to lend him his Gun, but he did not lend it him at this time; but he owns that the Prisoner had the Gun, though without his Leave; he says he was generally worse in Spring and Fall; he tells you that the Prisoner told him that my Lord *Onslow* had brought a Hamper of Wine one Night to his House, and that next Morning he found all the Bottles empty; and he said that my Lord *Onslow* had been there revelling, and making so great a Noise that he could not be at Rest for him: This was half a Year before this Accident happened. He says that he had the Gun to go and shoot Mr. *Waite's* Conies, for which he was to have Sixpence a-piece; and the Lane where my Lord *Onslow* was shot, leads to the Turnip-Field where Mr. *Waite's* Conies were; which is made some Use of in the Course of this Trial: He says he hath heard him say formerly he would shoot my Lord *Onslow* at the Horse-Race.

The next Witness is *John Dedman*; who says that the Prisoner is a Madman; gives an Account of his complaining of my Lord *Onslow*; says he had a House, but he had no Beds or Chairs in it; he says, about five or six Years ago he beat his Sisters and Maids, and he hath been forced to go and make Peace among them.

The next Witness is one *Richard Wheathy*; and he says he was his Barber; he says he hath shaved the Prisoner these two Years, and sometimes he was afraid to shave him, he would be swearing all the time; and once he said to the Witness, Damn you, cut my Throat.

The next is *John Tydie*: He says he is a very crazy Sort of a Fellow: He is asked what he means by a crazy Sort of a Fellow; he says he had several foolish Expressions; he hath heard him say the Bolleroyes and the Plagues plagued him so, that he could not rest: He heard him say the same as to the Hamper of Wine at *Sweetman's*; therefore I will not repeat it.

The next Witness, *Thomas Poulter*, says, he always took him to be out of his Mind; once he threatened to kill him, about a Fortnight before this Accident happened to him, in a Field where he was working, swearing and cursing; and at last he said, Damn *Tom Onslow*, and said, he had bewitched him, and he would go to the King, and know the Reason why my Lord *Onslow* troubled him so.

The next is *Mary Morris*: She says she always thought him to be mad by his mad Actions; she says he would curse and swear; and that the *Saturday* before he shot my Lord *Onslow*, he came to their House, and talked so, and looked so wildly, that she was frightened: When he was in Prison, she carried him Victuals, and the Goaler bid her bring no Bones, nor Knife, for they were afraid he would do himself a Mischief; then he asked a Boy that was with her, whether they were plagued with the Bollies and Buggs, as formerly.

The next is *Stephen Facbin*: He says they found him in *Loofley Lodge*, lying only upon the Wood, in a Morning, about two Years since, in the Spring of the Year, about Seven o'Clock in the Morning.

The next Witness is *Robert Dandy*; and he says he always thought him a crazy Man, seldom in his Senses; he says he hath threatened to beat his Father.

The next is *Mary Sweetman*, the Wife of — *Sweetman*, where he lodged, as hath been observed, for a matter of fifteen Months, and at that Time, she says, she thought him a Madman, not in his right Senses. Once they could not prevail upon him to come into the House, because he had said, there were Rogues hid, and he did lie out that Night. She gives you the same Story, about the Hamper of Wine; and that the Prisoner talk'd to her Husband, that there was too great Familiarity between her and my Lord *Onslow*. Sometimes he would pretend to read in the Bible: Once he read in the Bible two or three Chapters very well. Another Time, being worse, she gave him the Bible, and ask'd him to read; he pretended to read, but repeated most strange Stuff, as ever was in the World: He then talk'd of my Lord *Onslow's* plaguing him. She tells you, that he did not lie at home that Night before this Accident happen'd, but was home soon in the Morning; and he went out, and came back again, and then the Boy told him, that Mr. *Waite* wanted to have his Rabbits kill'd, and the Boy and he was to go Halves, and the Mother did lend him a Shilling to buy Powder and Shot for that Purpose. Now it seems, the Place where Mr. *Waite's* Conies are, is near the Place where this Accident happen'd, so that they would have you think, that this Powder and Shot, which he bought, was to kill these Rabbits, and that he was going that Way, in order to it. You will remember what was proved to you about the Shot, that it was not the usual Shot that he bought, but a bigger Sort. He went up the Lane, the Witness tells you, towards the Place where *Waite's* Conies were: Soon after that, she heard a Gun go off, and she thought he had been killing some of the Rabbits; but soon after, she saw several Horses, and no body upon them, and some Gentlemen, and they came and ask'd her for some Water and Brandy, to relieve my Lord *Onslow* under his Misfortune; and then she came to hear, that the Gun that went off, instead of killing Rabbits, went off against my Lord *Onslow*. She says, she hath heard him say, he would kill my Lord *Onslow*: She says, he hath sometimes threaten'd to kill her, but yet did not do her any Harm. They think this Evidence so very material, that they have produced two Witnesses, that tell you, that they heard this *Mary Sweetman* say the very

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same Things to them, as she hath now given in Evidence.

The next is Mr. *Copeland*; he says, he was with the Prisoner in the *Marshalsea*, and then he ask'd him, What induced him to do so horrid a Fact? He said, My Lord *Onslow* had bewitch'd him: He ask'd him, If any body had put him upon it? At first he hesitated, but afterwards he said, No body. He was very confused, and he thought him mad.

The next is Mr. *Darby*; he said, He often examin'd him, could get no Answer from him; but said, My Lord *Onslow* had bewitch'd him, and was a Trouble to him. This is the Evidence on behalf of the Prisoner, to show that the Prisoner is mad, and what he did, as such, is no Crime; and therefore no great Weight ought to be laid upon it.

But by way of Reply, they have read Papers under his own Hand. Mr. *Barwell Smith*, he was with him, and he hath proved them to be his Hand. One Paper is the State of his Case, and the Witness writ it, but he took it from his own Mouth, which is the same as if he had writ it himself, and the Prisoner sign'd it. It happen'd to be blotted; this is mention'd to show his Sense, and that he was a Man of Distinction; says he, You have blotted it, it can't be read, it must be writ over again: The Witness told him, No, it would do; Well, if it be so, I will be satisfied; and he desired the Witness to pray my Lord *Onslow*, that his Irons might be taken off, for they were very grievous to him. The next Paper is (here are three) a Letter writ with his own Hand; and here is another Letter writ with his own Hand: Both Sides agree, that the Jury might have the Papers to peruse. In this Paper he says, He was excited to this by — and the Repentment he express'd to my Lord *Onslow*, proceeded from several Persons perswading him, that my Lord *Onslow* was the Occasion of all his Troubles, and several Persons came here, and took the Advantage of it, and told him, that he was the Occasion of all his Troubles: This he gives you as the Occasion of his great Repentment against my Lord *Onslow*: This is as rational an Account as any mortal Man can give. Then there is this Letter, there he writes to my Lord *Onslow*; it is directed, To the Reverend Lord *Onslow*; but in the Letter it is, Please your Honour to take into your Consideration, &c. and the other Letter is much to the same Purpose: These you will have along with you.

Then you have Mr. *Coe*, and he went to him the Day the Fact was committed, and at that Time he would say nothing to him: The next Day he went again, and then he said, My Lord *Onslow* was the Occasion of all his Troubles. The third Day he went, and ask'd him, if he intended to kill my Lord *Onslow*? And he said, Yes, to be sure: Where did you intend to hit him? Says he, When I shoot at a Rabbit, I always aim at his Head. He went to him again, when he was in the *Marshalsea*, and he was very ill, and he ask'd for some White-wine for him, but he said, The White-wine was too sharp for his Stomach; and then he call'd for some Sack, which he had; and he held down his Head, and seem'd in a bad Condition: That he press'd him to know who set him on work, and he said, If my Lord will come here himself, let him, but let him not send any more of his Fools after me.—

N n n n

This



This Gentleman says, he was his School-Fellow; he was just of the same Nature then, a rugged, dogged, humourfome Fellow, hardly cared to talk or speak to any body; he is just the same now, tho' he hath had no Conversation with him since; but about two Years ago, he see him, and he had a Fish in his Hand to sell, and he ask'd to buy it, and offer'd him Sixpence for it; No, says he, it is honestly worth a Shilling, and a Shilling I will have. This is mention'd, to shew that he was a Man very sensible, made a very sensible Answer; no Man could make a properer Answer than this Man did.

This is the Evidence on both Sides. Now I have laid it before you, and you must consider of it; and the shooting my Lord *Onslow*, which is the Fact for which this Prisoner is indicted, is proved beyond all manner of Contradiction; but whether this shooting was malicious, that depends upon the Sanity of the Man. That he shot, and that wilfully; but whether maliciously, that is the Thing: That is the Question, Whether this Man hath the Use of his Reason and Sense? If he was under the Visitation of God, and could not distinguish between Good and Evil, and did not know what he did, though he committed the greatest Offence, yet he could not be guilty of any Offence against any Law whatsoever; for Guilt arises from the Mind, and the wicked Will and Intention of the Man. If a Man be deprived of his Reason, and consequently of his Intention, he cannot be guilty; and if that be the Case, though he had actually kill'd my Lord *Onslow*, he is exempted from Punishment: Punishment is intended for Example, and to deter other Persons from wicked Designs; but the Punishment of a Madman, a Person that hath no Design, can have no Example. This is on one Side. On the other Side, we must be very cautious; it is not every frantick and idle Humour of a Man, that will exempt him from Justice, and the Punishment of the Law. When a Man is guilty of a great Offence, it must be very plain and clear, before a Man is allow'd such an Exemption; therefore it is not every kind of frantick Humour, or something unaccountable in a Man's Actions, that points him out to be such a Madman as is to be exempted from Punishment: It must be a Man that is totally deprived of his Understanding and Memory, and doth not know what he is doing, no more than an Infant, than a Brute, or a wild Beast, such a one is never the Object of Punishment; therefore I must leave it

to your Consideration, whether the Condition this Man was in, as it is represented to you on one Side, or t'other, doth shew a Man, who knew what he was doing, and was able to distinguish whether he was doing Good or Evil, and understood what he did; and it is to be observed, they admit he was a Lunatick, and not an Ideot. A Man that is an Ideot, that is born so, never recovers, but a Lunatick may, and hath his Intervals; and they admit he was a Lunatick. You are to consider what he was at this Day, when he committed this Fact. There you have a great many Circumstances about the buying the Powder and the Shot; his going backward and forward: And if you believe he was sensible, and had the Use of his Reason, and understood what he did, then he is not within the Exemptions of the Law, but is as subject to Punishment as any other Person. Gentlemen, I must leave it to you.

Then the Jury withdrew to consider of their Verdict, and in a short Time return'd again.

*Cler. of the Arr.* Gentlemen, answer to your Names.

*Here, and so the rest.*

*Cler. of the Arr.* Gentlemen, are you all agreed on your Verdict?

*Jury.* Yes.

*Cler. of the Arr.* Who shall say for you?

*Jury.* Our Foreman.

*Cler. of the Arr.* *Edward Arnold*, hold up thy Hand; (*which he did.*) Look upon the Prisoner, How say you? Is *Edward Arnold* Guilty of the Felony whereof he stands indicted, or Not Guilty?

*Foreman.* Guilty.

*Cler. of the Arr.* What Goods or Chattels, Lands or Tenements?

*Foreman.* None, to our Knowledge.

*Cler. of the Arr.* Then hearken to your Verdict, as the Court hath recorded it. You say, *Edward Arnold* is guilty of the Felony whereof he stands indicted; and that he had not any Goods or Chattels, Lands or Tenements, at the Time of the Felony committed, or at any Time since, to your Knowledge, and so you say all.

Whereupon, he received Sentence of Death: But at the Intercession of the Right Honourable the Lord *Onslow*, his Execution was respited; and he continued a Prisoner in the New Goal, *Southwark*, upwards of thirty Years, and there died.



A N  
A P P E N D I X,

CONTAINING

TRIALS, RECORDS,  
ARGUMENTS in LAW,  
DYING SPEECHES, &c.

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L O N D O N:

Printed in the YEAR M.DCC.LXV.



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L O N D O N :

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## APPENDIX.

## NUMBER I.

*The Arraignment of Sir Thomas Wiat, Knight, at Westminster, xiiii Martii, Anno primo Mar. R. 1554.\**

**T**HOU art Indicted, Sir Thomas Wiat, Knight, for that thou, the 14th Daie of Februarie, didst, at Branfords, in the Countie of Middlesexe, leaue Warre against our Sovereigne Ladie and Queene, her Crowne and Dignitie: how saiest thou?

Art thoue Guiltie, or No?

*Wiat.* My Lordes, if I should pleade Guiltie, shoulde I not be then excluded afterwards to use certaine Things that I have to saie?

*Courte.* Youe shall, Mr. Wiat, have Leave to saie and be heard what you can.

*Wiat.* Then, my Lordes, must I confesse Guiltie, as in the nd Troupe must enforce me to saie?

I must acknowledge this to be a just Plague for my Sinnes, which I moste grevouslie have committed against God, who hath suffred me to fall into this beaustlie Brutishenes, and horrible Offence of Treason.

And loe in me the like, and as suche, who attempted like Enterprise from the Beginning: For peruse the Chronicles thorowe, and you shall read, that never Rebellion against their natural Prince and Countrie, from the Beginning, prospered: *Henrie the IIIth* was but a Rebell, for so muste I call him; he continued not long, but at the nd definite, it fell into the right Lyne againe: and the Usurpation revenged in his Blodd; For the Love of God, all youe Gentlemen that be here, remembre, and be taughte by Examples past, as also by thys my present Infelicitie, and most heynous Offence.

O most miserable, mischevous, and beaustlie, furious Imagination of mine: For I thought, that by the Marriage of the Prince of *Spaine*, the second Parson of this Realme should have bene in Daunger.

And I who have lived a Freeman borne, should together with my Cuntrie have bene brought to Bondage and Servitude by Aliens and Straungers; which brutishe Beastlines then seemed Reason, and wrought so farr, and to such Effect, as it lead me to the Use and Practise of this my committed Treason: But now, understanding the great Commoditie, Honor, and Suretie, which this Realme shall receive by this Mariadge, if it shall please the Quene to be mercifull unto me, theris no Man living that shall more trustelie and more faithfullie serve her Highenes, whatsoever the Quarrell be: I served the Quene's Highenes

againste the Duke of *Northumbrelande*, as my Lord of *Arundell* can witnes: My Grandfather was upon the Racke for Her Majesties Grandfather: My Father served King *Henrie the VIIth*, and I served him likewise; as also her Grace's Brother, and in Witness of my Blodd lost in the Feilde, I carie a Mayme. I alledge not all this, either to Merit or Advaunce, for by this beaustlie Brutishenes, to which most miserable I am fallen unto, I have not onelie procured my owne Deathe, but overthrowne my House and Name, and defaced all my Father's Well-doings, if ever there weare any.

I will not justifie my self in any thing, neither can I alledge any Excuse of my Offences, but moste humbly submit my self to the Quene's Majestie's Mercie and Pittie;

Defining youe, my Lord of *Suffex*, and youe Mr. *Hastings*, with all the reste, to be a Meane to the Quene's Highnes for Mercie; for Pittie is the greatest Treasure that ever God gave to Man, and it is that which he speciallie hath chosen to himself, which if her Highenes will vouchesaulf on me her Mercie to bestowe it on him who shal be moste gladd to serve her Highenes, and readiest to die in her Grace's Cause: For I protest before the Judge of all Judges, I never ment Hurte against her Highenes Parson.

*The Quene's Attornee.* Mr. Wiat, youe have great Cause to be sorie and repentante for the Faulte wherby youe have not onelie undone yourself, but also Nombres of other Gentlemen, who being true Men, might have served their Countrie: Yet, if you had gone no further, it might the better have bene borne withall: Not so contented, you procured the Duke of *Suffolk*, a Man sone trained to your Purpose, and his two Bretherne also, by which, without the Quene's Mercie, youe have overthrowne the noble House: Yet not so staied, youe attempted the second Parson of this Realme, who should have bene all our Comfortes, wherby her Honor is brought in question; or what End it will come unto, God knoweth, and this are youe the Author of.

*Wiat.* Good Mr. Attornee, as I will not in any thing justifie my self, so being in Decaie to to much, overchardge me not with more Mischief, and make or shewe to be that I was not: I am loathe to touche any Man openlie, but that for myne owne Discharge, I am driven for to do: And as I have given in Confession, so I as-

\* From the M.S. of D. Brereton Bouchier, late of Barnsey in Gloucestershire, 9007. 8. See Catalogi Librorum Manuscriptorum Angliae et Hiberniae, Tom. 2. Part 1. Page 256.



firm, that my Lord of *Devonshire* sent Sir *Edward Rogers* for me to come to his House, and when I came, he brake the whole Treason unto me; he said, that he himself would go, and I cannot tell, but he said he would doe many Things: This proves I was not the furrst.

*The Quene's Solicitor.* As Mr. Attorney hath moved you, that is, to repent your Offence, so I, for my Parte, wishe you the same: But what ment you furrst, when you rose, to write to my Ladie *Elizabeth's* Grace, that she should remove further from the Quene, and after that my Lord of *Norfolcke's* Men fledd from him at *Rocheſter* Bridge to you, as a joyfull Newes you sent to my Ladie *Elizabeth* of your good Succes, and she againe sent you Thanckes: Is not this true?

*Wiat.* What I have written, I confes, and it is trewe.

*The Master of the Horse's Question.* Mr. *Wiat*, weare not thies your Wordes, and in these Termes, when Mr. *Cornwallis* and I weare sent unto you from the Quene, you answered us, That the Quene should goe to the Toure, and you to have her Parson with the Towre in keping, also the Treasure, and sutch of the Councillors as you would require; for you said you had rather be trusted than truste.

*Solicitor.* This shal be ever called *Wiat's* Rebellion, as the Rebellion of *Watt Tiler* was called *Wat Tiler's*.

*Attorney.* Mr. *Wiat*, weare you not privie howe the Quene should have bene slaine, as she did walke? I do not burden you to consent to this; for thus muche muste I saie, you misliked it.

*Wiat.* Mr. Attorney, I furrst opened this, coming to my Remembraunce when I heard *William Thomas* would have slaine himselfe, for it was his Devise; and he brake in this wies to Sir *Nicholas Arnolde*, Yf the Quene weare killed, quoth he, all weare well, and theris not so fit a Man to doe it as *John Fitzwilliams*. Sir *Nicholas Arnolde* toulde it Sir *James Croftes*, and he toulde it *John Fitzwilliams*, and *John Fitzwilliams* tould it me, and thus at the 4th Hande I hearde it. Then made I a Cudgell with a whole brent in it, with a whole Iron and haulf a yard of ——— in it, and sought *John Fitzwilliams* a whole Daie, and could not finde him. The next Daie, I sent the Cudgell by my Man, and badd him bobb him well, for the Knave is but a Spie, and to utter it he durst not, and therefore be boulde to beate him: Thus my Man carried the Cudgell thre Daies, to have beaten him: By this it maie appere, how muche I abhorred that Practise.

Then was the Letter shewed which he wroate to the Duke of *Suffolk*, Mr. *Wiat* being then in *Southwarke*, that he should mete him at *Kingſton-Bridge*, and so to go to *London* with him,

althoughe he came with the fiewer Companye. *Wiat* at the furrst remembred no such Letter; but when it was shewed him, he confessed his Hande.

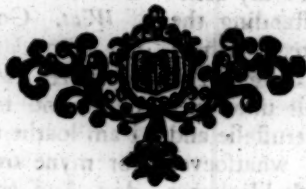
It was demandid of him, what he ment to write to my Ladie *Elizabeth*; and after his Pardon offred, to refuse also the Bountifulnes of the Quene to my Ladie *Elizabeth's* Grace, among other things beside recited.

*Wiat.* My Lords, as my Faulte is moste vile and heynous, for the which I aske God Mercie, and next him my Sovereigne Ladie and Quene, whom I moste grevoullie have offendid, appealing whoalie to her Mercie, without which I cannot challenge any thinge sithence my Offence committed. I have served her Highenes in suche sorte and degree as I either coulde or am hable; for I have uttred what I knowe in all thinges, whereby I might deliver her Highenes from sutch after Perill as the Concealement of Traitors or Treason might prejudice or hurte: I have done this for her Highenes Suretie, as I am bounde therunto by Dute and Truthe, which trulie I have declared; for I thinke and certainlie beleve, she is as carefull over this Realme as of that her cheffest Jewell: I muste confes that of all the Services I have bene in, ther was never a more desperat Journie taken in hande, and to the'nd continewd moste desperatlie. And wheras it was asked whie I refused the Quene's Highenes Pardon offred, unhappie Man, what shall I saie?

When I was once entred in that devillish Desperatnes, ther was no waie but to wade throughe with it that I had taken in hande; for I thoughte others had bene as forwarde as I my selfe; and following the Enterprize, used all possibell meanes that might endure the same, as writing to my Ladie *Elizabeth*, and making the Proclamation in *Southwarke*. Well, ther resteth nowe in the Quene's Highenes, either of Justice by Death, which justlie I have deserved with *Watt Tiler*, to make me an open Example to the Worlde's Ende; or ells of her Mercie to save me, and use my Service in suche sorte as her Highenes thinckes me mete and hable to doe: And albeit that her Grace hath this my Requeste in Writing, yet I moste humblie beseke you to be a meanes to the Quene's Highenes for her Mercie and Pittie, which is my laste Hoape and onelie Refuge: And I beseke God that the Quene maie be so mercifull unto me, as I meane to serve her Majestie faithfullie and trulie. God's Will be done on me. Yf ther be but two true Men, I will be the one to die at her Grace's Foote: And so endid.

The Lordes promised to be a meanes for him: His Countenance was dolefull, and Teares gushed oute continually.

He was afterwards executed.



NUMBER II.

*The Examinations and Depositions of William Powrie, George Dalgleish, John Hay younger of Talo, and John Hepburn of Bowton, concerning the Murder of the King, Queen Mary's Husband; with their Trial and Sentence: As also, the Declaration of Nicolas Hubert a Frenchman, commonly called Paris, in relation to that Murder and other Matters;\**

*Who were all executed for the said Murder.*

The Depositions of *William Powrie.*

*Apud Edinburgum 23 Junii, Ann. Dom. 1567.  
in presentia Dominorum Secreti Consilii.*

**W**illiams Powrie, borne in Kinsawnis, Seruitor to the Erle Botbwell, deponis, That ye sam Day the King wes slane at Night, the Erle Botbwell, accompanyt with James Ormestoune of yat Ilk, Hob Ormestoune his Fader Bruther, John Hepburne of Bolton, and John Hay zounger, zeid togidder to an Counsele in ye nether Hall of ye said Erle Botbwells Ludging in ye Abbay, about Four Houris Eftirnone, or yairby, and remanit yairin Twa Houris, or yairby; quhat yai did or said, he knowis not.

*Item.* Deponis, Yat John Hepburne of Bolton, at Ten Houres at Evin, commandit the Deponar and Pat Wilsoun to tak up ane Carriage of twa Maills and ane Tronk, and ye vthir an led-dirin Mail, quhilks were lyand in the said nether Hall, quhilks the Deponar and the said Pat put on and chargit upon twa Horses of my Lordis, the ane being his sown Horfe, and carriit the same to the Zet of the Enteres of the Black Friers, and yare laid the same down, quhair the Erle Botbwell, acumpanit with Robert Ormestoun and Paris, called French Paris, and vtheris twa quhilks had Cloakes about yare Faces, met the saidis Deponar and Pat Wilsoun. And yat zoung Tallo, the Lard of Ormestoun, and John Hepburne of Bolton, wes awaitand vpon ye Deponar and Pat Wilsoun, within the said Zet; and yat yare the saidis thre Persouns within the said Zet, resfauit the saids twa Charges, quhilks the Deponar knew to be Pulder, because the same wes in sundry Polks within the said Mail and Tronk; and ye Deponar and said Pat Wilsoun helpt yame in with the same; and the Powder being taken from yame, the said John Hepburne of Bolton sent this Deponar for Candell, and yat he coft Six Halpenny Candell fra George Burnis Wife in the Cowgate, and deliverit to the said Jobane: And yat ye saids Persouns Resfavaris of the Powder, had ane Towel with them, with ane littil licht Candell; and the saids Persouns within the said Zet oppynit the Tronk and Mail, and tuck out the

Polks with the Powder: And everie ane of yame tuck yane upon his Back, or under his Arm, and carryit the same away to the Back-wall of the Zaird yat is next the Trees, and yair the said Laird of Ormestoun, Johnne Hepburne of Bolton, and zoung Tallo, resfavit the Pulder fra yame, and wald suffer the Deponar and his Marrow to pass na furdar. And quhen the Deponar and his Marrow came bak againe to the said Frier Zet, the twa Horses that carryed the said Maill and Tronk war away, and zit yay carryit the saids Mail and Tronk again to the Abbay, and as yay came up the Black Frier Wind, the Quenes Grace was gangand before yame with licht Torches: And yat the Deponar and his Marrow being cumin to the said Erles Ludging in the Abbay, thai tarryit yare ane Hour or mair, and yan the said Erle came in, and immediately tuk aff his Claythes yat wer on, viz. a Pair of blak Velvet Hoise, trussit with Silver, and ane Doublet of Satin of the same Maner, and put on ane vthir Pair of black Hoise, and ane Doublet of Canwes, and tuk his side rideing Cloak about him, and incontinent past furth, and accompanyt with French Paris, the Deponar, George Dalgleish and Pat Wilsoun, and came down the Turnpike, and along the Back-wall of the Quenes Garden, quhill yai came to the Back of the Cunzie-house, and the Back of the Stabillis, while thay came to the Cannogate. And deponis, yat as yai came by the Gait of the Quenes South Garden, the twa Sentinellis yat stude at the Zet yat gangis to the utter Clois, speirit at yame, quha is yat? and yai answerit, Friends. The Centinel speirit, quhat Friends? and yai answerit, My Lord Botbwells Friends.

*Item.* Deponis, Yat yai come up the Canon-gate, and to the neither Bow, and findand the Bow steikand, Pat Wilsoun cryet to John Gallo-way, and desirit him to opin the Port to Friends of my Lord Botbwell, quha came and oppynit the Port, and yai enterit, and zeid up aboue Bassyntines House on the South-side of the Way, and knockit at ane Staire, and callit for the Laird of Ormestoun, and Robert Ormestoun, and nane answerit yame, and yai yan slippit down ane Clois beneith the Frier Wynd, and come to the Zet at the Black Friers, and enterit in at yat Zet,

\* Taken from the Cotton Library, sub Tit. Caligula, C. 1. Fol. 243, &c. This is the best and fullest Account of the Murder of King Henry Darnley ever published, and should be read after the Trial of James Earl Botbwell in Vol. I. p. 78.



and zeid quhill yai come to the Back-wall and Dyke, quhaire the Deponar and *Pat Wilson* left the utheris Persouns before expymit, with the Powder as said is, and yaire the Erle *Botbweille* past in over the Dyke, and bad the Deponar, *Pat Wilson*, and *George Dagleish* tarry still yaire while he come backwart to them. And furdre deponis, Yat yai tariit yare Half an Houre, and hard never Din of any Thing, quhill at last my Lord, accompanyt with zounge *Tallo*, and *Johnne Hepburne of Boltoun*, come to the Deponar, and vtheris twa Persouns being with him, and evin as my Lord and thir Twa comes to the Deponar and his Marowis at the Dyke, thai hard the Crack, and thai past away togidder out at the Frier Zet, and sinderit quhen yai came to the *Cowgair*, Pairt up the Blackfrier Wynd, and Pairt up the Clois which is under the Endmyllis Well, and met not quhill yai came to the End of the Bow, and zeid down ane Clois on the North Side of the Gait, to haif loppin the Wall of *Leith* Wynd, and yair my Lord thocht it over heich, and came again aback to the Port, and caufed cry upon *John Galloway*, and said yai war Friends of my Lord *Botbwilis*. And *John Galloway* ruse and let them furth, and syne yai past down *St. Mary's* Wynd, and down the back Zairds of the *Canongait*, and to the said Erles Ludging; and as yai past the Queens Guards before specifyt, sum Sentinells speirit at yame quha yai war, and yai answerit, yai war Friends of my L. *Botbweill*; and als speirit quhat Crak yat was, and yai answerit, yai knew not; and yat the Sentinels bid them, if yai were Servandis of my L. *Botbweill*, to gang yair Way.

My Lord come into his Ludging, and immediately callit for ane Drink, and tuk off his Cloathes incontinent, and zeid to his Bed, and tarriet in his Bed about Half an Hour, quhen Mr. *George Hacket* come to the Zet, and knocks, and desired to be in; and quhan he came in, he appeared to be in ane greit Effray, and was black as any Pik, and not ane Word to speik. My Lord enquirit, Quhat is the Matter, Man? And he answerit, The Kingis Houfe is blawn up, and I trow the King be slayn. And my Lord cryet, Fy, Treasoun! And yan he raise and pat on his Claiths. And yarefter the Erle *Huntley* and mony came in to my Lord, and yai zeid into the Quenes Houfe.

Item. Deponis, Yat upon the nixt Nicht efter, my Lord desyrit yis Deponar, *Pat Wilson*, *George Dagleish*, the Laird of *Ormeistoun*, and *Hob Ormeistoun*, *John Hepburn*, and zounge *Tallo*, to keip thair Tongues clois, and yai suld nevir want sa lang as he had, and yat he suld send the Deponar and *Pat Wilson* to the Armitage, and yat yai suld be honestly sustainit. And being inquirt, Gif this Deponar, at my Lord *Botbweills* Desyre, socht ane fyne Lunt of any of the Suddartis: And answerit, Yat he did the same, and gat a Piece of fyne Lunt of Half a Faddome, or yareby, fra ane of the Suddartis, quhais Name he knawis not, and deliverit to *Johnne Hepburne of Boltoun*, upon *Saturday* before the Kingis Slaughtre.

*Apud Edinburgum 3 Julii, Ann. Dom. 1567. in presentia Dominorum Secreti Concilii.*

*W*illiams *Powrie* re-examined, deponis, Yat the Carage of the Tronk and Mail contenit in his former Deposition, were carryed by him

and *Pat Wilson*, upon ane gray Horfs yat pertained to *Herman Page* to my Lord, at twa sundry Tymes, and war carryed and conveyit by yaim into the Place containet in his former Deposit, and yat at the Frier Wynd Fute yis Deponar said to *Pat Wilson*, at the conveying of the last Carriage, thir Words, *Jesu, Patt*, quhatin ane Gait is yis we are gangand? I trow it be not gude. And he answerit, I trow it be not gude; but weist, hald zour Tongue.

Item. Deponis, Quhan the Deponar and *Pat Wilson* come to the Frier Zet with the last Convoy, and laid the same down, *Robert Ormeistoun* come furth, and said thir Words. This is not gude like, I trow this Purpois will not come to this Nycht, I will in and se quhat yai are doing.

Item. Yarefter quhen the Powder and Greath was carryed inwart, the Deponar tarryand at the Dyke, the Laird of *Ormeistoun* of yat ilk came again, and said to *John Hepburne* and younge *Tallo*, thir Words (*Paris Frenchman* being with him) Be God it is fair in Field, cum of it quhat will, and bade the Deponar and *Pat Wilson* gang their Way; and at the same Tyme yat ye Deponar and *Pat Wilson* laid down the last Carriage at the said Frier Gait, the E. *Botbweill* came unto thame utwith the Frier Zet, accompanyt with Thre more, quhilks had yare Cloaks, and Mulis upon yair Feet.

Item. Deponis, Yat the saidis *Johnne Hepburne of Boltoun*, upon *Saturday* at Evin befor the Kingis Slaughtre, brought the Mail and Tronk quhairin the Powder was, to the E. of *Botbwiles* Ludging, and laid in the same in the neither Hall: And the Deponar declaris, Yat at the last Horfe Carriage he bare up ane toome Poulder Barrel to the same Place yai carriet the Pulder, and yat he wist not how nor be quhome the same came in the Erle *Botbweills* Ludging in the Abby.

Item. Deponis, Yat upon the Morn estir the Kingis Slaughtre, viz. *Monday*, *Johnne Hepburne of Boltoun* gat ane gray Horfe, Mr. *Young of Tallo* ane broun Horfs fra my L. *Botbweill*.

Item. Inquirt gyf *William Geddes* Deposition, being red to the Deponar, was trew; declairit the same was all trew, except the Deponar remembers not quhidder he bad and counsulit this *Geddes* not to be — on the Grit yat Nycht or not.

This is the trew Copy of the Depositions of the said *William Powrie*, maid in Presence of the Lords of Secret Counfall, concordand and agrieand with the Principal remainand at the Office of Justiciary, collationat be me Sir *John Bellenden of Auchmoule*, Clerk of our Souerane Lordis Justiciarie, witnessing my Sign and Subscription manual.

*Joannes Bellenden Clericus Justiciarie.*

The Deposition of *George Dagleish*.

*Apud Edinburgum, 26 Junii, Ann. Dom. 1567. presentibus comitibus de Mortoun & Athol, preposito de Dundee, & domino de Grange.*

*G*eorge *Dagleish* Seruande in the Chalmer to the Erle *Botbwell*, of the Aige of 27 Zeiris, or yareby, &c. Deponis, Yat ye Sunday the King was slayne at Nycht the E. *Botbwell*, accompanyt with the Laird of *Ormeistoun* of yat ilk, *Hob Ormeistoun* his Fader Bruther, *Johnne Hepburne* of

of *Bolstone*, *Jobne Hay* of *Tallo* zounger, war togidder in the neither Hall of the said Erle Ludging in the Abby, about Four Houres in the Estirnone, and remained yerein ane Hour and a Half, and quhat yai did knaws not, be reffoun the Deponar remanit for the maist Part in my Lords Chalmer.

*Item.* Deponis, Yat my Lord his Maister came to his Chalmer about 12 Hours at Evin, or yareby, and tuke of his Clayths, and chingit his Hois and Doublet, viz. ane Pair of Hois stocket with black Welvet, pasementt with Silver, and ane Doublet of black Satin of the same Maner, and put on ane vther Pair of black Hois, and ane Canwes Doublet white, and tuke his side riding Cloak about him, of sad *Inglish* Claith, callit the new Colour. And incontinent the Erle, *French Paris*, *William Powry* Seruitor and Porter to the said Erle, *Patt Willfoun*, and the Deponar, zeid down the Turnepyke alto-gidder, and endlong the Bak of the Quenes Garden, quhill yow cum to the Bak of the Cunzie House, and the Bak of the Stabillis, quhill zow come to the *Cannogate* forenent the Abbey Zet. And depones, As yai came by the Entry of the Quenes South Garden, ane of the Sentinels yat stude at the Zet yat gangis to the utter Clois, speirit at thame, Quhais that? Yai answerit, Friends; quhat Friends? Friends to my Lord *Botbwell*.

*Item.* Deponis, Yai came up the *Canogait* to the Nethir Bow, quhill wes steikit, and yat *Patt Willfoun* cryit to *John Galloway*, and bid him come down and oppin the Port and let yame in, and yat yai tarriet ane gude Quhile or *Galloway* came down to let yame in, and speirit at yame, Quhat did yow out of yair Beds yat Time of Night? and estir yai enterit within the Porte, yai zeid up aboue *Bassyntines* House on the South side of the Gait, and knockit at ane Dur beneth the Swordclippers, and callit for the Lard of *Ormesbounes*, and one within answerit, he was not yare; and yai passit down a Clois beneth Frier Wynd, and enterit in at the Zet of the Black Friers, quhil thay come to the Bak Wall and Dyke of the Town Wall, quhair my Lord and *Paris* past in over the Wall, and commandit ye Deponar, *William Powry* and *Pati Willfoun*, to remayne still quhill yai came till yame, and quhar-evir yai hard or saw, not to stur or depart quhill he cam againe: And yat yis Deponar and the uther Twa tarreit yair Half an Hour or yareby, and in the meyn time hard no Din of any Thing, quhill at last my Lord, accompanyit with *John Hay* zounger of *Tallo*, *Jobne Hepburne* of *Bolton*, come to the Deponar, and vtheris Twa, and even as my Lord and yai Twa came to the Deponar and his Company, yai hard the Crack, and past all away togidder out at the Frier Zet, and sunderit in the *Cowgait*. My Lord, *Jobne Hepburne*, and *Pat Willfoun*, *William Powrie* and the Deponar zeid up ane Wynd be-est the Frier Wynd, and crosst the Hiegait at the Nether Bow, to haif lopin the Wall at *Leith* Wynd, bot thai thocht the Wall over hich, and came agane to the Port; and my Lord caussit cry up-one *Jobne Galloway*, and said, Yai were Ser-vands of my Lord *Botbwell*; and yat he ruse and oppynit the Wickit, quha it wes yat ruse, ignorat: And syne yai passit down St. Mary Wynd, and down the Back of the *Canogait*, and to the said Erles Ludging, and enterit be the

same Turnpicke yat yai cam furth at. And as yai passit by the Quenes Gardens, ane of the Sentinels speirit, Quha yai war? And yai answerit, Yai war Friends of my Lord *Botbwell*. And so soon as my Lord came in his Ludgeing he cryit for ane Drink, and incontinent yareftir tuke off his Claythes and zeid to his Bed, and lay be the Space of Half an Hour or yareby; and yat Mr. *George Hacket* came to the Chalmer about Half an Hour estir my Lord lay down. Quhan he came in, he apperit to be very effrayit, and my Lord speirit, Quhat is the Matter, Man? And he answerit, Yat he heard at the *Kirk of Field* like the Schot of ane Cannoun, and, as I hear say, the Kings House is blawin up, and I trow the King be slayne. And incontinent my Lord raife and pat on his Clayths, that is to say, the same Hois and Doublet yat he had on upon *Sunday*, quhilks wer Pessements with Siluer, and sa sone as my Lordis Clayths was on, he departit furth of the Chalmer, and the Deponar remanit still in the Chalmer.

This is the trew Copy of the Depositione of the said *George Dalglisb*, maid in Prefence of the Lordis before expremit, concordand and agreeand with the Principall remayning at the Office of Justiciarie, collationat by me Sir *John Bellenden* Knight, Clerk of our Sovereigne Lordis Justiciary, witnessing my Signe and Subscription manual.

*Joannes Bellenden Clericus Justiciarie.*

The Deposition of *John Hay* younger of *Talo*.

*Apud* Edinburgum 13 die mensis Septembris, An. Dom. 1567. in Prefence of my Lord Regent, the Erles of Morton and Athol, the Lairds of Lochlevin, and Petarow, Mr. James Magyll, and the Justice Clerk.

THE quhill Day, *John Hay* zounger of *Tallo* being examinait anent the Kingis Graces Murther, grantit and confessit himself culpable yareof, and as he wald answer before God, deponit and declarit the Erle *Botbwele* his Masters Pairt of the same, sa far as the Deponar knew, in Manner following, that is to say, That upon the 7 Day of *Februar* last bypast, before the Kingis Murther, th'Erle *Botbwell*, within his Chalmer in his Ludging in the Abby of *Halyrudbous*, schew to the Deponar the Purpose of the Kingis Murther, sayand their Words or siclike, *Jobne*, this is the Mater, the Kingis Destruction is devysit, and I mon reveill it unto ye, for an I put not him down, I can not haif an Lyfe in *Scotland*, he will be my Destruction, and I reveill this to the as to my Friend, and gyf zow reveill it again, it will be my Destruction, and I fall seik yi Life first: And yarwith he gave the Deponar also diverse Admonitions, and also fair Promises to keip the Mater secret, and to take Part with him in the Kingis Slaughter, as he had devisit; and yat yareafter at Evin, in the Prefence of *John Hepburn* callit of *Bolton*, the said Erle proponit the samyn Matter to the Deponar, quhill *John Hepburn* was on the Counsaill yairof of before. And th'Erle *Botbwell* said to the Deponar, I have devisit it in this Manner, and ye fall do the same, that is to say, He said in Prefence of *James Ormiston* of yat ilk, and the said *John Hepburn*, thir Words, The Pulder mon be laid in the House under the Kingis Chalmer,



quhair the Queene suld lye, in an Barril, gyf it may be gottin within the Barril, and the same Barril fall haif an Hoill at the nether End yare-of, and an Tre holit and howkit like an Troch put to the Hoill of the Barril, and an Lunt yare-upon, quhilk fall be fyr it at the far End, and the unfyrit End laid in the Hoill of the Barril in the Pulder. And this Porpos suld haif bene put in Execution upon the *Saturday* at Night, and the Matter fayllit yat Night, becaus all Thingis were not in Reddynes yairfor.

*Item.* Deponit, Yat upon *Sunday* yarefter, about thre or four Houres Afternone, in th'Erle *Botbwell's* nedder House in the Abbaye, the said Erle, *John Hepburn* of *Bolton*, and the Deponar, devysit yat my Lord suld gang up to the said Laird of *Ormiston's* Chalmer (like as he did) sua sone as it was mirk, and yat yare past with my Lord, quyet on Fute, *John Hepburn* of *Bolton*, the Deponar, and *Ade Murray* met yame, and sum utheris quham the Deponar remembers not, at the said Laird of *Ormiston's* Stairefute of his Chalmer, above the Bow, on the South-syde of the Gait, and yat my Lord commandit the said *Ade* and utheris to pass to Mr. *John Spensis*, and remayne yare quhill he came to yame; and yat my Lord, *John Hepburn* of *Bolton*, and the Deponar, enterit in the said Laird of *Ormiston's* Chalmer, quhair yai fand the said Lard, and *Hob Ormiston* his Fader Bruthir, and an Bruther of the Lards, quhais Name the Deponar knaws not, and was put to the Dur: And yair yai consullit quhat Gait yai suld gang to the Kingis House, becaus yai had not tane Purpois yairup-on of before: And syne yai zeid all down to gydder to the Black Freir Zeit, and ye said Lard of *Ormiston* zeid in throw the awld Howfis and Wallis, and past and opynitt the said Freir Zet to my Lord, the Deponar, and the rest foresaid. And yat my Lord and the Deponar zeid up and down the *Kowgate*, quhile *Wille Powry* and *Pate Wilison* brocht the Powder, quhilk was brocht at twa sundry Times, furth of the Abbay, from the Erlis Ludgeing, and yat the same was in a Tronk and an Mail, and was brought upon *Hermanis* Naig, and yat the Powder was reffavit in at the Black Freir Zeit be the said Lard of *Ormiston*, and *John Hepburn* of *Boltown*, and yat the samyn was born in be *Wille Powry*, *Pate Wilison*, and the saids Lard of *Ormiston*, *Hob Ormiston* and the Deponar in the Trunk and Mail. And yareftir the Powder yat was in the Trunk, was taken furth of the same, and put in Polks, and the Powder yat was in baith the Tronk and Mail was caryit to the Kingis House in Polks.

And it is of Veritie, that *Paris* the French Man was in the nedder House, under the Kingis Chalmer, and had an Key of the Backdown, and then the said Lard of *Ormiston* past in at the said Dur, and spake with the said *Hob* his Fader Bruthir, and with the said *Paris*, being both therein, and fand the Time convenient, and came furth again, and tauld the samyn to the said Erle and his Company; and yat yai had with yame alsua a Tre and a Powder Barrel, for to have done as said is, but the Barrel was so meikle, it could not be gottin in at the Duur; and yan yai tuk all the Polks and carried yame within the said laich House, and temit yame on the Flour in an Heip, and the Polks weir taken furth again, and yat my Lord was in the House afoir, and had left the said *Paris* yarein, and the said *Hob* stand-

and at the Dur awaitand upon yair Coming: And yat the said Lard of *Ormiston* said to the said *John Hepburn*, Ze ken now quhat ye haif to do, quhen all is quyet aboue zow, fyre the End of the Lunt, and cum zour Way. And yareftir the said Lard of *Ormiston* past his Way with *Hob* with him, and *Paris*. *John Hepburn* and ye Deponar taryit still within the said laich House a certain Space, and *Paris* lockit the back Dur, and the Dur yat passis up the Turnpike to the Kingis Chalmer, quhair the King, the Queene, and ye Erle *Botbwell*, and vthers were, and passit up to yame, levand behind him the said *John Hepburn* and the Deponar lockit in the said nedder House; and as the Deponar believes, *Paris* shew the Erle *Botbwell* that all Thingis were in Readiness, and syne sone yareftir, the Queene and the Lordis returnit to the Abbay, my Lord *Botbwell* being in her Company; and yareftir the Erle *Botbwell*, accompaniit with *Paris* and *Georde Dalgleish*, came to the back Zard, and the said *Hepburn* quha had twa Keyis of the back Dur, lichtit the Lunt, and came with the Deponar, and lockit the Durris after yame, and fand the Erle of *Botbwell* in the Zaird, quha speirit at yame, gyf they had done that quhill he had bidden yame, and fyr it the Lunt; and yai answerit yat it was done. And efter my Lord and thai tarryit in the Zaird ane lang Tyme: And quhen my Lord saw yat ye Matter came not hastily to pass, he was angre, and wald have gen in himself in the House, and the said *John Hepburn* stoppit him, saying thir Wordis, Ze neid not. And my Lord said thir Wordis, I will not gang away quhile I see it done; and within ane schort Space it fyr it, my Lord, *John Hepburn*, the Deponar, and *Paris* being gangang at the Fute of the Aley in the said Zard, and quhen they saw the House riseand, and heard the Crack, they ran their Way, and come down the Wynd fra the said Freir Zett; and yat my Lord yareftir past to the Wall at *Leith* Wynd, to have past over it, but becaus he thocht it over hich, he sturrit yairwith, and came back again to the nedder Bow, and past furth at the Port, after *Johnne Hepburne* had cried upon *John Galloway* Porter, and causit him oppin the Port; and that the saids *John Hepburn* and *Georde Dalgleish* passit afore with my Lord; and sone yareftir, the Deponar and *Paris* followit, and the Deponar passit to his Bed in *John Hepburn's* in the *Canongait*, and my Lord passit to his awin Ludgeing in the Abbay.

The Deposition of *John Hepburn*, called *John* of *Bowton*.

*Apud* Edinburgum 8 die mensis Decembris, An. Dom. 1567. in Presence of my Lord Regent, the Erle of Athol, the Lord Lindsay, the Lard of Grange, and the Justice Clerk.

THE quhilk Day, *John Hepburn*, callit *Johnne* of *Bowtoun*, being examinit upon the Kingis Murther, grantit himself culpable and gilty yairof, and as he wald answer before God, deponit and declaryt the Erle of *Botbweile* his Mastairs Part of the samyn, so far as the Deponar knew in this Matter, that is to say, The first Tyme yat evir the Erle of *Botbweile* spake yis Matter of the Kyngis Murther to the Deponar, was ane Day or twa aftir the bringing of the Powder furth of *Dunbar*, at quhilk Tyme he said to the Deponar in this Manner, Thair is ane Purpois

Purpois dividit amongs some of the Noblemen, and amongs the rest, yat the Kinge sall be slane, and that every ane of us sall send twa Servandis to the doing yarof, owther on the Fields, or otherwise as he may be apprehendit; and yan desiryt ye Deponar to be ane of the Entreprysers for him; quhais Answer was, Yat it was ane evill Purpois, and zit, because he was Servand and Coufignance to his Lordshyp, he wald do as vtheirs wald, and put Hand to it. One the Morne yarestir, he callit *James Ormiston* of that ilk, the Deponar and *John Hay* zounger of *Tallo*, and bfeak the Purpois to yame, and maid the like Declaratioune to yame, yat vthir Noblemen had as far Enteres as he in yat Matter; and yai maid to him evin sic Answer as he had done. Quhether my Lord had schewed yame ye Purpois of befoir or not, ye Deponar knawes not. Swa every Day yare was tauking amongis yame of the samyn Purpois, quhill within twa Dais before ye Murther, yat the said Erle changed Purpois of the slaying of the Kinge one the Feildes, because yan it wald be knawn, and schew to yame quhat Way it mycht be usit better be ye Pulder. And on the *Sunday*, in the Gloming before Nicht, ye 9 Daie of *Februar* last bepast, the Deponar send ye said *Jobne Hayes* Man for ane tome Poulder Barrel to the Man quhillk *Jobne Haye* had coft the same fra, yat dwells above *Sandie Bruces* Cloise Head. At Even my Lord suppit in Maister *Jobne Balfours* Hous, quhare the Bischop of *Argyle* maid the Banket, and estir Supper my Lord came up the Gait, and yai all with him to the said Lard of *Ormeistonis* Chalmer, quhair ye Deponar and *Jobne Haye* past in, and fand the said Lard and *Hob Ormiston* his Fader Bruther; and as ye Deponar rememberis, yat was the first Time yat *Hob* knew of yat Matter, and yare yai spake togidder, and my Lord schewit yame ye Maner: And the Deponar, the said Lard of *Ormeistoun*, *Hob Ormiston*, and *Jobne Haye*, past to the Fute of the black Freir Wind, haveing sent away *Willie Powry* and *Pate Wilson* for the Poulder. And before yar comiing furth of the said Chalmer, my Lord departit with his Servandis, quhair ye Deponar knawes not. And the saids Foure being togidder, as is befoir wryttin, at the Fute of the Freir Wind, the said *Willie Powry* and *Pate Wilson* cum agene with the Poulder, quhillk was brocht at two Times in ane Tronk and ane Mail, and yai carreit it in at black Freres Zet, and quhen yai war changing ye Pulder furth of the Tronks in Polks, my Lord come and speirit, Gyf all was redy, and bad yame haifte before the Queene come furth of the Kingis House, for gyf she come furth before yare were redy, yare wald not find sic Commodity. And yan ye Pulder being put in Polks, the saids Laird of *Ormeistoun*, *Hob Ormiston*, this Deponar, *Jobne Haye*, *Willie Powry*, and *Pate Wilson* turfit up the Poulder to the Kingis House, and fand *Paris* at the Dur, quha openit the samyn, and yare assayit to have taken in the said Barrell, and it wald not gang in at the Dur, and yan yai listit the samyn, and brocht it back to the Zaird, and had in the Poulder, and tuming it furth of the Polks in ane Bing and Heip upon the Flur, evin directly under the Kingis Bed; and yan ye said Laird of *Ormeistoun*, *Hob Ormiston*, and *Paris* past away, and left the Deponar and *John Hay* within the said House, quhilks tarryit yarein quhill estir twa Houres

after Mydnight, and yan tuk ane Lunt, with ane litle Tre quharon it lay, and placit ye same, ye ane End in the Poulder, and fyrtyt ye vthir End, and cam yair Way, and lockit ye thre Duris behind yame; and at yair cuming furth to the Zaird, yare fand my Lord *Bothwell*, *Geordie Dalgleish*, *Pat Wilson*, and *Willie Powry*; and my Lord speirit at them, Gyf yare had done all Things as was ordourit: And yai said, *Zea*; and yai tarryit upon ane Quarter of ane Hour yarestir, and my Lord thocht lang, and speirit gyf yair was ony Part of the House yat they mycht se the Lunt gyff it was burnand anouch, and yai said, Yare wes nane but ane Wundo quhillk wes within ye Clois, and as they war speeking upon it, the House begouth to take Fyre and blew up, and yai ran away, and cum up black Freir Wind, and zeid down ane Clois to haif gottin over the broken Wall at *Leith* Wind, but my Lord thocht it over heich to loup, because of his sair Hand, and swa returnit to ye neddir Bow, and walkynit *John Galloway* Portar, quham yai gart cum down and opin the Zet; and *Willie Powry*, *Paris*, and *John Haye*, zeid evin down the *Cannongait*, and my Lord, the Deponar, *Pat Wilson*, and *Georde Dalgleish*, zeid down Saint Mary Wind, and behind the Zairds unto my Lordis Ludgeing in the Abby. And in yair byganging, Twa of the Watchis spirit, quhat yai were, and ye Deponar answerit, We are Servands of the Erle *Bothwell*, gangand to him with News out of the Town; and swa my Lord passit to his Bed, and yis Deponar lay down in ane Bed in ye Hall. And sone yarestir Mr. *George Hackett* came in, quha told, Yat the House of the Kirk of *Field* was blawin up in the Air, and the King slane. And within short Space yairafter my Lord *Huntley* came in, and my Lord *Bothwell* rais and put on his Claithis, and passit into the Queenis House. And the Deponar tarryit sum Tyme yarestir, and cumand furth, fand the Abbay Zeit clofit, and yan ye Deponar fand the said *John Hay* in his Bed in *John Hepburns*, and lay down with him.

Item. Deponis, Yat yare wes Fourteen false Keys maid for oppyning of all the Lockes of the Dures of the Kingis Ludgings at the Kirk of *Field*, quhillk the Deponar, estir the comitting of the said Murther, keist in the Quarle Hole betwix ye Abbay and *Leith*.

Thir are ye true Copies of the Depositionis of the said *John Haye* zounger of *Tallo*, and *Jobne Hepburne* callit of *Boutounne*, maid in Presence of my Lord Regent, and the Lords before mentionit, in Manner befoir expremitt, concordant and agreand with the Originalis, quhilks are remainand in the Justiciarie, collationate be me Sir *John Bellenden* of *Auchinoul*, Knight, Clerk of our Soverane Lordis Justiciary.

*Joannes Bellenden Clericus Justiciarie.*

The Tryal and Sentence of the saids *William Powrie*, *George Dalgleish*, *John Hay*, and *John Hepburn*.

*Curia justiciarie S. D. N. regis, tenta & inchoata in pratorio de Edinburgh tertio die mensis Januarii, anno Domini millesimo quingentesimo sexagesimo septimo, per honorabilem virum magistrum Thomam Craig, justitiarium deputatum nomine nobilis & potentis domini Archebaldi comitis Argadiz,*



*Argadiæ, domini Campbell & Lorne, justiciaril generalis dicti S. D. N. R. totius regni sui generaliter constituti. Seclis vocatis & curia affirmata.*

**T**HE quhilk Day, *John Hepburne* callit of *Bolton*, *John Haye* apperand of *Tallo*, *William Powrie* and *George Dalgleish*, being present in Judgement in the said Court, to be accusit of the Dittay astir-specifeit, were putt to the Knowledge of the Persons underwritten, quhilk were lawefully summoned to pass upon yair Afize, choisin and admittit be thameselues, and sworn to deliver upon the Points of the said Dittay, viz.

<i>John Lockart</i> of the Bar,	<i>John Stoddart</i> yair,
The Laird of <i>Caprinton</i> ,	<i>William Strang</i> ,
<i>James Campbell</i> of <i>Chankstoun</i> ,	<i>James Freeman</i> Bur-
	ges of <i>Edinburt</i> ,
<i>Heugh Wallace</i> of <i>Carnell</i> ,	<i>Heugh Brown</i> yair,
The Laird of <i>Mochrum</i> ,	<i>Charles Geddes</i> ,
<i>William St. Clare</i> in <i>Gosford</i> ,	<i>John Watson</i> ,
Laird of <i>Gastoun</i> ,	<i>James Aickman</i> .
<i>Robert Gray</i> Burges of <i>Edinburt</i> .	

And immediately astir the chesing and swering of the saids Personis of Affys, as Use is, the foresaid *John Hepburne*, *John Haye*, *William Powrie*, and *George Dalgleish*, being accusit be Dittay, oppinly read in Judgement, of the Crymes following; and estir the Reding alswa in Jugement of certane Answeris and Depositionis maid be thame of before at particular Examinationis of yame upon ye saidis Crymes, quhilks yai recognoscit, and confessit to be of Verity in Presence of the saidis Personis of Affys, the said Personis of Affys removit furth of the said Court, and all togiddir convenit and ressonit upoun the Pointis of the said Dittay, togiddir with ye saidis Depositionis, and syne being yairwith rypely avysit, reinterit in the said Court of Justiciarie, and yair, in Presens of the said Justice-depute, be yair Deliverance pronouncit and declarit be ye Mouth of the Speiker *John Lockart* of the Bar, Chancilar of the said Affys, fand and deliverit the saids *John Hepburne*, *John Haye*, *William Powrie*, and *George Dalgleish*, to be culpable, fylit, and convict of Art and Part of the cruel, shamefull, trefonabill, and abhominabill Slauchter and Murder of umquhill the Kingis Grace, Fadir to our Soverane Lord, in his awin Ludging for the Tyme, within the Burgh of *Edinburt*, besyde the Kirk of *Field*, quhair he was lyand in his Bed, taking the Nychts Rest, treasonably risand Fyre within the same, with ane grite Quantitie of Pouder, through Force of the quhilk the said haill Lugen wes raisit and blawin in the Air, and his Grace wes murderit trefonably, and maist cruelly slane and destroyit by yame yarein: And als, for Art and Part of the crewall Slauchter and Murthor of umquhil *William Tailzor* his Graces Serwitour, and unquhil *Andro Macaig*, trefonably throw raising of the said Fyre, as said is, committit in the Cumpany with *James* sumetime Erle *Bothwell*, now Rebel, and declarit Traitor in Parliment, and at the Horn, in the Moneth of *Februarie* last bypast, under Seilence of Nycht,

upon sett Purposes, Provisioun, and forthought Felonye.

And thairfor the said Justice-depute, be Dome pronuncit be the Mouth of *Andro Lindsey* Dempstare of the said Court of Justiciarie, decernit, ordanit, and adjudgit the saidis *John Hepburne*, *John Haye*, *William Powrie*, and *George Dalgleish*, to haif committit the Crymes of Trefoun and lese Majestie; and as manifest Traytours to be demanit as followis, that is to say, the said *John Hepburne*, *John Haye*, *William Powrie*, to be hangit to the Deid on ane Gibbet at the Mercat Croce of *Edinburt*, and yair Heddis, Leggis, and Armis to be cuttit from yair Bodies, and put up and hangin (as for Example) on the Portis of *Edinburgh*, and vther Portis of the principall Borrowis of yis Realme, and yair Bodies to be brynt and consumit in Fyre besyde the said Gibbet. And the said *George Dalgleish* to be hangeit to the Deid, and his Heid to be cuttit fra his Bodey, and put upon the Port of *Edinburgh*. And siclyke, decernit and ordanit the saidis Personis, and ilk ane of yame, to haif foirfaulted and tynt all and sundrye yair Landis, Heritages, Possessionis, Talkis, Steddingis, Lyferentis, Actionis, Debtis, and all vthers yair Guds, Moveables, and Unmoveables, to be inbrocht, and remaine with our Soverayne Lord, as his Escheat.

*Extrahum de libro actorum adjournalis S. D. N. Regis, per me Johannem Bellenden de Auchinoule, militem, clericum justiciarie ejusdem generalis, sub meis signo & subscriptione manualibus.*

Johannes Bellenden Clericus Justiciarie.

#### The Examination and Declaration of French Paris. \*

*A Sanctandre, le 10 jour d' Aoust 1569. Nicholas Howbert dict Paris a esté interrogué sur les Articles & Demands qui s' ensuivent, &c. & premierement.*

**I**Nterroge quant premierment il entra en credit avec la Roynie. *Resp.* Que ce fust comme la Roynie fust a *Kalendar* allant a *Glasgow*, qu' alors, elle luy baylla une Bourse la ou il avoit envyron ou 3 ou 400 Escus, pour la porter a Monsieur de *Boduel*, lequel aprez avoir receu la dicte Bourse sur le Chemin entre *Kalendar* & *Glasgow* luy dict, que le dict Paris s'en alast avec la Roynie, & qu'il se tint pres d' elle, & qu' il regardast bien a ce qu' elle feroit lui disant que la Roynie luy donnois des Lettres pour les luy porter, la Roynie estant arriuee a *Glasgow* luy dict, je t' enverray a *Lisbourg*, tient toy prest, & ayant demeure la deux Jours, avec lad. Dame laquelle escript des Lettres & a luy les bailla dyant, vous direz de bouche a Monf. de *Boduel* qu' il baille ces Lettres qui s' adressent a Monf. de *Lethington* a lui mesmes, & qu' il parle a lui, & voyes les parler ensemble & regardes la facon de faire & qu' elle miene ilz feront car c' est ce disoyt elle pour scavoir lequell est meilleur pour loger le Roy a *Craigmillar* ou a *Kirk o Field*, a fin d' auoyr bon Air car s' il logeoyt a l' Abbay, le Prince pourroit bien prendre sa Maladie a Cause que ces Seruiteurs ne pourroyent s' en garder d' aller veoyr le Prince: En oultre

\* Taken from the Cotton Library, Calig. C. 1. Fol. 318. But the Original is in the Paper-Office.

† i. e. *Edinburgh*.

qu' il dict aud. de *Boduel* que le Roy la vouloyt bayser mais elle ne pas vouldre de peur de sa Maladye, chose que *Raynes* en tesmoigneroit bien ; & plus (ce dict elle) vous direz a Monf. de *Boduel* que je ne vais jamais vers le Roy que *Raynes* n' y est & voyst tout ce que je fais. *Item.* La Royne lui dict, *Paris* hastez vous de revenir car je ne bougeray d' ici, jusques au Temps que m' aures raporte la Responce.

Estant led. *Paris* arruyé a *Lislebourg*, trouue led. de *Boduel* en son Logis a l' Abbay, lequel lui dist. Ha *Paris*, tu es le bien venue. Monsieur dict il voici des Lettres que la Royne vous envoie & aussi a Monsieur de *Liddington*, vous priant de les luy deliurer, & que je vous vis parler ensemble pour veoir vostre fasson de faire & comment vous accordiez ensemble, fort bien dict il, car j' ay ce jourd' huy parlé a lui, & lui a donne une Haquiene. Le lendemain led. *Paris* dict qu'il vint au Logis dud. *Boduel* par trois fois le chercher, a 8, 9 & 10 Heures & ne le sceut jamais trouuer, mais a la fin *Powrie* le Portier lui dist qu' il alast chercher, a la haulte Ville que par adventure il le trouueroit, en quelque lieu & l' ayant cherché il voit venir une Troupe de Gens de vers le *Kirk de Field*, la ou estoit led. Sieur de *Boduel* & Monf. *Jacques Balfour* coste a coste ensemble lesquels s' en alloient d' isner au Logis dud. Monf. *Jacques*. Led. *Paris* pria Monf. de *Boduel* de le despecher vers la Royne, apres d' isner dit il je le feray, & quant il retourna querir sa despeche apres d' isner il trouua le Sieur de *Boduel* & led. Mr. *Jacques* seuls Teste a Teste en une Chambre, & led. Sieur de *Boduel* qui escrivi de sa propre Main, & apres auoir faict, il dict a *Paris*, voyla la responce retourne t' en a la Royne & me recommandes bien humblement a sa bonne Grace, & lui dictes que tout ira bien, car Monf. *Jacques Balfour*, & moy n' auons dormis toute la Nuit, ains auons mis ordre en toute & auons apresté le Logis, & dites a la Royne que je lui envoie ce Diamant que tu lui porteras, & que si j' auois mon Cœur je le luy enverrois tres volontiers, mais je ne l' ay pas moi : Va t' en a Monf. de *Liddington*, & lui demandez s' il veult rescrire a la Royne, ce que led. *Paris* faict & le trouue a la Chambre des Comptes, & lui demande s' il plaist rendre la Responce aux Lettres de la Royne, que Monf. de *Boduel* lui auoit bailees. Oui (dit il) & la dessus il prend du Papier incontinent & escript, & quant faict, led. *Paris* lui dict que la Royne l' auoit commandé de lui demander lequel de deux Logis seroit le meilleur pour le Roy, car elle ne bougera de la jusques a ce qu' il auroyt raporte sa Responce ; led. *Liddington* lui respondit que le *Kirk de Field* seroit bon, & led. Sieur de *Boduel* & lui auoient advisé ensemble la dessus. Ainsi led. *Paris* partit pour s' en aller a *Glasgow* vers la Royne & estant de retour a *Lislebourg* & auoir faict son Message qui lui estoit donné desd. Seig. de bouche la Royne lui demande, s' il avoit veu parler Mess. de *Boduel* & *Liddington* ensemble dict que non, mais que Monf. de *Boduel* lui auoit dict qu' ils avoient parler de bon Visage ensemble, & que led. Sieur de *Liddington* estoit du tout a lui & que le Logis estoit prest.

*Item.* Comme elle retournoit de *Glasgow* vers *Lislebourg* avec le Roy a *Kallander* il s' adresse un Homme de Monf. *Boduel* aud. *Paris* & lui baillie une Lettre pour la presenter a la Royne,

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ce qu' il fist, laquelle lui demande sy l' Homme estoit seur, je pense dit il Madame qu' il neust voulu vous envoyer un Homme qui ne fust seur ; la dessus en allant, elle rescript une Lettre & y mist dedans un Anneau & la lui bailla, pour la bailla aud. Homme porter, chose qu' il fist, pour la rapporter aud. Seig. de *Boduel*. Apres la Royne & le Roy estans a *Lysbgo*, elle dit au *Paris* qu' elle voulust mettre *Gillert Curle* Valet de Chambre chez le Roy pource qu' il estoit de bon Esprit a fin de veoir ce qu' il feroit, car elle ne se fyoit point a *Sande Durban*. Dud. lieu *Johan Hay* fust par elle despeche vers Monf. de *Boduel*, auquel elle parle assez long Temps ; en apres aussi *Paris* avecques des *Brasseletz* aud. Sieur *Boduel*. Led. *Paris* arrivant a *Lislebourg* lui baillie les *Brasseletz*, lequel Seigneur estoit prest a monter a Cheval pour a aller trouuer le Roy & la Royne, avecques lequel led. *Paris* alla au deuant le Roy, lequel ils conduirent jusques a son Logis a *Kirk a Field*.

Interrogue s' il scauoit aucune privauté entre la Royne & *Boduel* durant le Temps que le Roy gyfoit a *Kirk a Field*. Respond, que Monf. *Boduel* lui auoit dict que toutes les nuits *Jehan Hepburne* seroit le griet sous les Galleries a *Saincte Croix*, cependant que *Lady Reires* iroit bien tard le querir pour l' amener a la Chambre de la Royne, lui defendant assavoir a *Paris* sur la Vie de ne dire que sa Femme estoit auueques lui.

Interrogue si sauoit de l' Entrepris du meurtre du Roy depuis son Arrivement a *Kirk a Field* jusques au jour de l' Execution. Respond, que non autrement que ce qu' il en a deja deposé en sa Deposition faicte le 9<sup>me</sup> de ce mois, en adjoustant que le jour que Monf. de *Boduel* lui auoit communiqué le fait de meurtre du Roy qui fust le mesme jour que la Royne couchast au Logis du Roy a *Kirk a Field* (ainsi comme il en souuient fort bien) & comme led. *Paris* vouloit dresser le liét de la Royne en sa Chambre qui estoit droite sous la Chambre du Roy, ainsi que Monf. de *Boduel* lui auoit commandé lors qu' il parle avecques luy au trou la ou il se descaschoit pour faire ses Affaires, led. Sieur de *Boduel* defendist aud. *Paris* de ne dresser le liét de la Royne droit sous le liét du Roy car je y veulx mettre la Poudre en cest endroit la ce dict il cette nuit la apres que le liét fust dressé en la Chambre de la Royne ce que je fis au mesmes en droit la ou il me fust defendu par led. de *Boduel*, la Royne me dict, Sot que tu es, je ne veulx pas que mon liét soy en cest endroyt la & de faict le feist oster, par lesquels paroles j' ay apperceu a mon Esprit qu' elle auoit Cognoissance du faict, la dessus, je prins la Hardiesse de lui dire, Madame, Monf. de *Boduel* m' a commandé de lui porter les clefs de vostre Chambre & qu' il a Envie d' y faire quelque chose, c' est de faire sauter le Roy en l' air, par Poudre qu' il y fera mettre, ne me parle poynt de cela ceste heurecy, ce dict elle fais en ce que tu voudra. La dessus je ne essaya parler plus auant : A ceste heurecy je commence a considerer que j' estois employez en ce faict meschant. Aparauant par paroles couertes & desguises estant enuoye de *Glasgow* vers Monf. de *Boduel* pour sauoir lequel des Logis estoient le meilleur, & par ce aussi qu' il ma respondu alors quant il me renvoye vers la Royne, vous la direz si elle vous demand ce que j' ay fais que je veille

Q q q

toute



toute ceste Nuite & Monf. *Jacques Balfour* pour aprestre le Logis du Roy.

Estant interrogue, si la Royne passoit plus oultre ceste nuit sur ce Purpos la; dict que non; mais le pressayt apres plus fort que jamais, de parler a elle du propos de Monf. de *Boduel* de sa Femmes & des autres choses & estant couche ne dormoyt poynt toute la nuit, ains escriuoit des Lettres a Monf. de *Boduel* & les envoye par led. *Paris* au Sieur de *Boduel* enuiron l'onze a douze Heures de nuit, mais rien de creance. Et ayant deliure ceste Lettre aud. Sieur de *Boduel* il rescrit estant au list, & en baillant la Responce aud. *Paris*; il lui dict, dites a la Royne que je ne dormiray point que je ne ascheue mon Entreprise, quant je deburoys trayner la Pique toute ma Vie pour l'Amour d'elle.

Estant de retour vers la Royne *Vendredy* au Matin, luy ayant racompte ces mesmes Paroles que luy auoyt dictes Monf. de *Boduel* hé bien *Paris* ce dict elle (en riant) il n'en viendra jamais sy Dieu plaist a ce poynt la; & se disoyt elle estant au list. Et comme elle s'abilloit led. *Paris* prend les deux Clefs de la Chambre de la Royne selon de Commandement dud. Monf. de *Boduel* & les lui apport, lequel ayant fait sortir tout le Monde de la Chambre prend la clef d'ung Coffre qu'il auoit en sa Pochette, & apres auoir ouuerte le dit Coffre entre des autres clefs contrefaictes toute neufues & en regardans les unes aupres des autres, dict a *Paris*, ha! ouy elles sont bien, raport celles la & il remeist les contrefaictes dedans le Coffre.

Estant interrogue, s'il scauoyt qui auoit faicte & baillie les clefs contrefaictes aud. Sieur de *Boduel*. Respond, qu'il n'en scauoit rien si non que led. Sieur de *Boduel*, lui dist, qu'il auoit toutes les clefs des Portes de ce logis la, & que lui & Maistre *Jacques Balfour* auoyent esté toute une Nuit pour chercher & scauoyr la meilleur Entrée; comme il a deja depose, mais cependant que led. *Paris* estoit absent avecques ses clefs, *Archibald Betbun* Huissier demand les clefs, pour laisser sortir la Royne au jardin & ne les pouuant trouuer la Royne en fust fâché & dict tout haut a *Paris* a son retour, *Paris* pourquoy auez vous emporté les clefs de ma Chambre, lequel ne lui respondit mot sur l'heure mais apres la trouuant a part lui dist, ha Madame pourquoy m'aez vous dicté deuant le Monde que j'auois pris les clefs de vostre Chambre, voyant que vous scaues bien le pourquoy; ha ce dict elle *Paris* c'est tout ung: Ne te foucie, ne te foucie, & d'autant qu'il en pourroit auoir bon Souuenance comme il dict que ce *Vendredy*, la Nuyt la Royne coucha en cores au Logis du Roy, & lui renvoya de reches porter des Lettres au Sieur de *Boduel*.

Interrogue, s'il auoyt rien entendu de ce purpos le *Sampmedy* au Matin. Respond, Que non, sy non que la Royne dist en Presence de ceulx de sa Chambre qu'il y auoit en quelque Querrelle entre le Roy & Monf. de *Sainct Croix* lequel auoyt bon moyen a ceste Heure la de tuer le Roy car il n'y auoit en la Chambre alors qu'elle pour les departir. Et dict oultre, qu'apres dîner led. Sieur de *Boduel* lui commande de prendre la clef de la Chambre de la Royne, chose qu'il n'auoit envie de faire, mais comme la Royne fortoit de sa Chambre, elle le regarde & lui commande de prendre la dite clef. Et au soyr la Royne estant a l'Abbay elle enuoy led. *Paris*

vers Monsieur de *Boduel*, lui commanda lui dire de bouche allez vous en a Monsieur de *Boduel*, & lui dicté qu'il me semble qu'il seroyt le mieulx que Monsieur de *St. Croix*, avecque *Guillame Blackatre* aillent a la Chambre du Roy faire ce que led. de *Boduel* scait, & qu'il parle a Monsieur de *St. Croix* touchant ce Purpos car il seroit mieulx ainsy qu'aultrement; & pour ce ne seroit qu'un peu Prisonier dedans le Chasteau; apres auoir led. *Paris* racompté ces faicts a Monsieur de *Boduel*, il lui dict, Je parlerois a Monsieur de *Sainct Croix*, & puis j'y irois parler moy mesme a la Royne. Led. *Paris* n'a Souuenance d'aultre chose que ce feist ce jour la; mais le reste est contenue en sa premiere Deposition. jusque a ce que la Royne arriua en l'Abbaye, & Monsieur de *Boduel* s'estant aussi retiré en sa Chambre, avecque led. *Paris*, suruint Monsieur de *Hontely* en Compagnye de deux ou troys Seruiteurs, & ce par le chemin derriere l'Abbaye, qui mene droyt au Logis de son Monsieur de *Rutbven*; & apres qu'ils auoyent parlé en l'oreille ensemble comme Monsieur de *Boduel*, auoit deja commencé de changer ses Habillements, le dict *Boduel* deist apres au dit *Paris*, que Monsieur de *Hontely* c'estoit offerte d'aller avecques lui, mais qu'il ne le vouloyt mener, quant & lui; & apres que Monsieur de *Hontely* ce fust partie pour aller coucher, led. de *Boduel* prend le *Tailor* & *Paris* avecques lui, comme il est dit en sa premiere Deposition a ceste Marque +. Le *Lundy* matin entre neuf & dix heures led. *Paris* dict qu'il entra dans la Chambre de la Royne la quelle estoit bien close, & son list tendu du noire, ensigne de Dueil, & de la Chandelles allumes dedans la ruelle, ou Madame de *Briant* luy donnoit a dejeuner ung Ouf la, ou aussi Monsieur de *Boduel* arriue & parla a elle secretement soubz la Courtine. Ce jour la *Lundy* ce passe ainsy, sans se que led. *Paris* parle a elle *Mardy* au matin elle se leue, & le dit *Paris* estant entré en sa Chambre, la Royne lui demanda (*Paris* qu'as tu) Helas ce dit il je vois que chacun me regarde de coste, ne te chaille, dit elle, je te seray bon Visage, Personne ne t'oseroit dire mot cependant, elle ne luy dit chose de Conséquence jusques a ce qu'elle alloit a *Seton*, alors, elle luy commandast de prendre une Cessette ou il y auoit — — — — — que le Thesaurier luy auoyt apporté de *France* pour la porter a la Chambre de Monsieur de *Boduel*, qui estoit a ceste heur la loge dedans le Palais, au dessus de la Chambre la ou se tenoit le Conseil & puis apres lui commanda de prendre son Coffre des Bagues, & les faire porter au Chasteau, & le deliurer entre le mains de Sieur de *Skirling* pour lors Capitaine soubz Monsieur de *Boduel*, chose qu'il feist, en apres elle voyant led. *Paris* tout fâché, elle pressoyt souuent de faire Seruice a Monsieur de *Boduel*, ce qu'il n'auoit envie de faire ains demandoit souuent son Congé & voyant cela, a la fin elle luy dit, *Paris* allez vous conseiller avec Monsieur *Jacques Balfour*, c'est ung Homme d'esprit je moy suis consolée par plusieurs foyes & me console de present.

Item. Interrogué du premiere priuaute qu'il a cognoistre entre la Royne & Monsieur *Boduel*.

Respond, Que c'estoit alors que led. de *Boduel* conduysoit la Royne vers *Glasgow*, quant elle alloit querir le Roy a *Kalendar* apres souper; assez tard Lady *Reynes* vint a la Chambre de Monsieur

sieur de Boduel & voyt led. *Paris*, la & demande, que faict ce *Paris* ici? C'est tout ung ce dit il *Paris* ne dira chose que je lui defend dire, & la dessus elle l'amene a la Chambre de la Roynne, ceci c'estoit le soire deuant, que le lendemain la Roynne envoya la Course par *Paris* aud. Monsieur de Boduel.

Item. En oultre il dit & declare qu'environ le Temps que led. de Boduel fust faict Duc, la Roynne lui bailla le buffet. & vesselle d'argent de Monsieur le Prince, la ou estoit ces Armoyries pour la porter a Monsieur de *Botbweille* lequel luy dict que c'estoit pour en faire oster la Marque de Prince, & y mettre la sienne ce qu'il delivra a ung qui a espouse une *Marguerite Hepbron*, (mais il ne scait bonnement son nom) lequel lui dit qu'il le debuioit bailler a Monsieur *Jacques Balfour* pour le faire faire.

Item. Il dict & confesse que la Nuyt auparavant que la Roynne fust rayve & enlevée dud. Sieur de Boduel, que Monsieur d'*Ormeiston* vint parler a la Roynne bien secretement a *Lythgow*. La dessus, la Roynne rescript une Lettre par le dit *Paris*, & par ce qu'il ne scauoit bien le Chemin, la Roynne le feist conduire par led. *Ormeistone* chez Monsieur de *Saltoun* la ou led. Monsieur de Boduel, estoit en bonne Compaignée, & mesmes les Capitaines coucher aupres de luy & d'autres. Et trouvent led. Seigneur de Boduel endormy l'esveilla, & luy dict, Monsieur voyla des Lettres que la Roynne vous envoie, he bien *Paris* ce dit il couche toy lajung peu cependant je m'en vays escrire, & apres auoir escript & dict au dict *Paris*,

recommende me humblement a la Roynne & luy dictes que j'iray aujourd'hui la trouver sur le chemin au pont.

Item. Estant interogué, s'il sauoit pourquoy *Joseph* s'en alla de ce Pais. Respond, Que la Roynne luy dict (*Paris*) il faut que tu controuueres quelque chose en ton esprit pour faire peur a *Joseph* a fin qu'il s'en aille, & voyant qu'il ne pouuoit rien faire elle luy dit, je feray faire une Lettre que tu perdras derrier luy pour luy faire peur mais lui ne pouuant ce faire, elle le feist dire par le Justice Clerk comme il peust qu'il eust a comparoistre au Parlement chose qu'il l'affroyast grandement & courut ca & la demandant son Congé, en fin la Roynne baille neufvingt — a *Paris* pour les bailler a *Joseph* a fin qu'il s'en allast, ce qu'il fist, & ainsi ayant receu lad. Somme il s'en alla.

Item. Dict, que *Jehan Hay* souuent apres la Mort du Roi le Conseilloit & le Comfortoit bien, & qu'aulture ne le Consoloit, que souuent comme Monsieur de *Huntly* le veoyt le Voyant defait le demandoit, *Paris* qu'as tu?

This is the true Copy of the Declaration of the said *Nicholas Hubert*, alias *Paris*, quhair of the Principal is markit every Lef with his own Hand, and the same being red again in his Presence, he avowit the same, and all Parts and Clauses thereof to be undoubtedly trew.

*Ita est Alexander Hay Scriba Secreti Consilii S. D. N. Regis, ac Notarius publicus.*



### N U M B E R III.

#### *Per Indictamenta Michael' xiiij<sup>o</sup> et xiiij<sup>o</sup> Elizabeth' Regine. \**

**Midd'** **I**nquisitio capt' coram d'na Regina apud Westmonaster' die Jovis proximi post octabis sancti Martini anno Regni d'ne Elizabeth' Dei gratia Angliæ Franciæ & Hibernie Regine fidei defensoris &c. quartodecimo per sac' m Thomæ Gresham Militis Thome Chamberlen militis Will'mi Hollis militis Francisci Newdigate armiger' Will'mi Hawtree armiger' Will'mi Wrightman armiger' Thome Higate armiger' Johannis Marshe armiger' Will'mi Clarke armiger' Anthonii Colclothe armiger' Edwardi Osborne armiger' Johannis Ischem armiger' Robarti Burbage armiger' Ric' Bellamy armiger' Thome Norwod armiger' Jasper Leake armiger' & Galfridi Walkaden armiger'. Qui dicunt supra sac' m suum qd Thomas Dux Norf'k nuper de Remynhall in Comitatu Norf'k ut falsus proditor contra illustrissimam et christianissimam Principem d'nam nostram Elizabeth' Dei gratia Anglie Francie et Hibernie Regiam fidei defensorem et sup'mam d'nam suam timorem dei in corde suo non habens nec debit' legianc' sue ponderans sed instigatione diabolica seduct' cordialem dilectionem et veram debitam obedienc' quas veri et fideles subditi dicte d'ne

Regine erga ipsam d'nam Reginam gererent et de jure gerere tenent' penitus subtrahere delere et extinguere intendens viceffimo secundo die Septembris anno regni d'cæ d'ne n're Elizabeth' Reginæ nunc xi<sup>mo</sup> ac diversis aliis diebus et vicibus antea et postea apud *Charterbouse* in Comitatu Midd' falso malitiose et proditorie conspiravit imaginat' fuit circumivit et compasavit d'cam D'nam Reginam supremam d'nam suam non solum de regali statu tit'lo potestate et regimine Regni sui Angliæ penitus deprivare depone de jicere et exhereditare verum etiam eand'm d'nam Reginam ad mortem et finalem destructionem adducere et ponere: Ac seditionem in dicto regno Angliæ suscitare levare et facere ac etiam stragem miserabilem inter subdit' dicte d'ne Regine per totu' Regnu' Anglie gen'are et causare, ac insurrectionem et rebellionem versus d'cam d'nam Reginam supremam et naturalem d'nam suam procurare et suscitare, ac guerram publicam et acerrimam infra hoc Regnum suum Angl' contra ipsam d'nam Reginam suscitare levare et habere ac gubernationem ejusdem Regni et sinceram Dei religionem in eodem Regno recte et pie stabilit' pro voluntate et liberto suis mu-

\* This is the Indictment of Thomas Duke of Norfolk, tried 1571. 14 Eliz. See his Trial, Vol. I. Pag. 82. and copied from the M. S. of D. Brereton Bourchier, late of Barnsly in Gloucestershire. 9007. 8.



tare et alterare necnon statum totius reipublice per universas suas p't' bene institut' et ordinat' totaliter subvertere et destruere et diversos extraneos et alienigenos non existent' subdit' dicte d'ne Reginæ ad hoc regnum Angl' hostiliter invadend' et guerram acerrimam versus eandem D'nam Reginam in eodem Regno levand' fuscipiend' et faciend' incitare procurare et inducere: Et ad illa nequissima et nephandissima proditoria imaginationes compassa' cones inten' cones et propo- sit' sua pred'ca perimplend' et perficiend' ip'e idem Thomas Dux Norf'k sciens et perfect' intelligens Mariam nuper Scotorum Reginam clammasse et pretendisse titulum et int'esse ad presentem possessionem et statu' imp'alis Corone hujus Regni Angl' Sciensque et perfecte intelligens qd predicta Maria nuper Scotorum Regina preantea falsissime nequissime et injustissime asseverasset et affirmasset qd p'fat' d'na n'ra Regina Elizabeth' nullum jus neque titulum ad Coronam hujus Regni Angl' h'uit Et etiam sciens perfecteque intelligens qd p'fat' Maria nuper Scotorum Regina falsissime nequissime et injustissime usurpasset stilo' titulum et Regine nomen hujus Regni Angl'. Et qd ipsa p'fat' Maria nuper Scotorum Regina scripsisset et no'iasset seip'am in divers' suis Script' Reginam Angl': Et quod ip'a ead'm Maria nuper Scotorum Regina gessisset et conjungisset arma hujus Regni Angl' cum armis Regni Scotiæ tam in Sigillis et valibus suis argenteis q'm in aliis rebus sine aliquali differens' sive distinctione. Et insuper sciens perfecteque intelligens quod dicta Maria nuper Scotorum Regina non revocasset nec renunciasset iniqua et injusta clam' et usurpac'oes sua pred'ca xxiii<sup>o</sup> die Septembris anno regni d'ce d'ne Elizabeth' nunc Regine Anglie xj<sup>mo</sup> ac diversis aliis diebus et vicibus antea et postea apud *Charterhouse* pred'cam in Com' Midd' predict' falso subdole & proditorie querebat et conabat sine assensu concensu et agreement' p'fat' d'ne n're Elizabeth' Regine supreme d'ne sue seip'm conjungere et in Matrimonio copulare cum p'fat' Maria nuper Scotorum Regina. Et eisdem de causa et propo'ito ip'e idem Dux pred'co xxiii<sup>o</sup> die Septembris anno undecimo supradicto et diversis aliis diebus et vicibus antea et postea apud *Charterhouse* pred'cam in Com' Midd' predict' falso subdole et proditorie scripsit diversas literas ad p'fatam Mariam nuper Scotorum Reginam et tam eadem l'ras quam diversa signa et pignora voc' *Toakens* ad illam p'fatam Mariam nuper Scotorum Reginam pred'co xxiii<sup>o</sup> die Septembris anno undecimo supradicto et diversis aliis diebus et vicibus antea et postea falso subdole et proditorie misit. Necnon eodem xxij<sup>o</sup> die Septembris anno Regni d'ce Regine xi<sup>mo</sup> supradicto et diversis aliis diebus et vicibus antea et postea apud *Charterhouse* pred'cam in Com' Midd' predict' falso subdole et proditorie mutuo dedit et accomodavit tam p'fat' Mariæ nuper Scotorum Reginæ quam amicis et adherentibus suis plures et diversas magnas pecuniarum summas: Nec non a p'fat' Maria nuper Scotorum Regina pred'co xxij<sup>o</sup> die Septembris anno Regni d'ce d'ne Elizabeth' Regine undecimo supradict' et diversis aliis diebus et vicibus antea et postea apud *Charterhouse* pred'cam in Com' Midd' predict' diversas literas ac diversa signa et pignora vocat' *Toakens* falso subdole et proditorie recepit et h'uit licet p'fat' Dux tunc antea per p'fat' d'nam

Elizabeth' Reginam super debit' legians' sue sp'ialit' prohibitus et vetitus fuit quod nullo modo intromitteret sive tractaret de maritagio cu' p'fat' Maria nuper Scotorum Regina faciend' licet etiam p'fatus Dux per diversas litteras et instrument' manu propria ip'ius Ducis script' et per p'fat' ducem d'ce d'ne Elizabeth' Regine supreme d'ne sue missa et exhibit' preantea p'fat' maritagium penitus recusasset et renuntiasset protestans et affirmans se in eodem maritagio nunquam intromissurum sive aliqualit' processurum: Et etiam iidem Jur' ulterius super sac'r'm suum pred'c'm presentant et dicunt quod cum Thomas Comes Northumbr' nuper de *Topclif* in Com' Ebor' et Anna uxor ejus, Carolus Comes Westmerl' nuper de *Branspeth* in Comitatu Dunelm', Richardus Norton nuper de *Norton Conyers* in Comit' Ebor' armiger, Thomas Markenfeld nuper de *Markenfeld* in dict' Com' Ebor' armiger simul cum aliis falsis proditoribus rebellatoribus & Inimicis publicis d'ce d'ne Regine Elizabeth' Deum pre oculis suis non habentes nec debitum legiantiar' suarum ponderant' sed Instigatione diabolica seduct' machinantes deviantes et conspirantes d'cam d'nam Reginam Elizabeth' de regali Statu titulo et potestate Regni sui Angl' dejicere, et dishereditare, necnon eand'm d'nam Reginam ad mortem et finalem destructionem adducere et ponere ea intentione ut illas proditorum conspirationes et imaginationes suas perimplerent et ad effectum redigerent decimo sexto die Novembris anno Regni d'ce d'ne Regine nunc undecimo ap'd *Rippon* in d'co Com' Ebor' contra dictam d'nam Reginam supremam D'nam suam ex eor' co'i propo'ito et assensu cum magna multitudine gentium ad numerum quatuor mille homin' et ultra modo guerino armati et arraiat' seip'os illicite falso et proditorie insimul congregaver' et assemblaver' ac guerram publicam et acerrimam versus dictam d'nam Reginam Elizabeth' supremam d'nam suam apud *Rippon* predictam dicto xvi die Novembris anno undecimo supradicto falso et proditorie paraver' ordinaver' et levaver', De quibus omnibus et singulis proditoribus rebellionibus et conspirationibus pred'cis dicti Thomas Comes Northumbr' et Anna uxor ejus, Carolus Comes Westmerl', Richardus Norton, et Thomas Markenfelde cum multis aliis dictorum falsorum proditorum et rebellatorum predict' per debit' legis formam legitime indictat' et postea superinde legitime utlagat' et attinct' fuer' et adhuc existunt prout per sefep'al' record' inde in Cur' d'ce d'ne Regine nunc coram ip'a Regina remanen' plene liquet de record' cumque post perpetrationem et commissionem nequissimarum proditorum predictarum in forma pred'ca per ip'os factaru' et commissarum predicti Thomas Comes Northumbr' et Anna uxor ejus, Carolus Comes Westmerl', Richardus Norton et Thomas Markenfelde, ac quamplures alii falsorum proditorum et rebellatorum predict' xx<sup>mo</sup> die Decembris anno Regni d'ce d'ne Regine nunc undecimo pro proditoribus illis extra hoc regnum Angl' in regnum Scotiæ fugier' et recesser' et ib'm per quosdam proceres et magnates dicti regni Scotie scil't per Jacobum Ducem Chastle le Roy, Comitem de Huntley, D'num Harris, D'num Hume, D'num de Boclughe et D'num de Fermhurst, et alios Scotos Subditos d'ci Regni Scotie existen' recept' auxiliati et confortati fuer', ac de eadem d'na Regina Elizabeth'

Elizabeth' detent' in et versus quos proceres et magnates pred'cos d'ci Regni Scotie eadem d'na Elizabeth' Regina postea pro eadem causa per prenobilem Thomam Comitem Suffex ejusdem d'ne Regine in partibus borealibus locu' tenen' suum generalem cum potenti et forti exercitu armatorum hominum apertam et publicam guerram proclamavit levavit et fecit, tanquam versus hostes et inimicos suos et regni sui Anglie, rac'one cujus guerre p'fat' Carolus Comes Westmerl' Anna uxor dicti Thomæ Comitis Northumbr' Richardus Norton et Thomas Markenfelde a predicto Regno Scotie usque Antverpia in partibus Brabantie fugier' recesser' et transfetaver', ac ib'm idem Carolus Comes Westmerl' Anna uxor dicti Thome Comitis Northumbr' Richardus Norton et Thomas Markenfelde contra legiantiarum suarum debet' morabant' in manifestum contempt' d'ce domine Regine nunc et legum suarum, Pred'cus tamen Thomas Dux Norf'k premissorum non ignarus sed ea omnia et singula in forma pred'ca bene et perfecte intelligens et sciens vj die August' anno regni d'ce d'ne Elizabeth' Regine duodecimo supradicto apud *Charterhouse* pred'cam in Com' Midd' predict' ac diversis aliis diebus et vicibus antea et postea pred'co Carolo Comiti Westmerl' ac p'fat' Anne uxori predicti Thome Comitis Northumbr' diversas pecuniarum summas pro auxilio adjument' relevamine conforta'cone et supportatione suis mitti delib'ar' et distribui falso et proditorie procuravit et causavit, Et insuper quod idem Thomas Dux Norf'k xvj die Julii anno regni d'ne n're Elizabeth' Regine Angl' tertiodecimo apud *Charterhouse* pred'cam in Com' Midd' predict' ac diversis aliis diebus et vicibus antea et postea eisdem p'fat' Jacobo duci Chastle de le Roy, Comiti de Huntley, D'no Harris, D'no Hume, D'no de Buclughe, D'no Fermhurst, inimicis publicis dicte d'ne Elizabeth' nunc Regine Angl' tunc existen' falso et proditorie fuit adherens confortans et auxilians: Et ulterius Jur' predicti super sac'm suu' predictum presentant et dicunt quod cum Pius quintus modo Ep'us Romanus est et existit et ad'm fuit notabilis capit'lis et publicus inimicus d'ce d'ne n're Regine Elizabeth' et hujus Regni Anglie, Quod idem p'fat' Thomas Dux Norf'k hoc bene sciens et intelligens decimo die Martii anno regni ejusdem d'ne Elizabeth' Regine tertiodecimo apud *Charterhouse* pred'cam in Com' Midd' predict' ac diversis aliis diebus et vicibus antea et postea ea inten'cone ut prodic'ones pred'cas ad effectum produceret falso subdole et proditorie consensit ad visavit et procuravit quendam Robartum Riholp'ie mercatorem alienig'num extra hoc regnum Anglie mitti ad p'fat' Ep'm Romanu' nec non ad Phillippu' Regem Hispaniarum et Ducem de Alva ad obtinend' de ip'o p'fat' Ep'o Romano quasdam pecuniaru' summas imponend' exponend' circa provisionem et maintenancem exercitus militu' ac hominu' armatorum ad intrand' et invadend' hoc regnum Anglie & ad guerram levand' suscipiend' maintenend' in eodem regno contra ip'am D'nam n'ram Elizabeth' reginam: Ac quod idem Rex Hispaniarum per mediationem dicti Ducis de Alva mitteret in hoc regnum Anglie quendam exercitum armatorum hominu' et militu' ad hoc regnu' Anglie invadend' ac ad guerram publicam et acerrimam contra d'cam d'nam Reginam Elizabeth' levand' su-

scipiehd' et maintenend': Et etiam quod idem Thomas Dux Norf'k eodem x<sup>o</sup> die Martij anno regni dicte d'ne Elizabeth' Regine tertiodecimo supradict' ac diversis aliis diebus et vicibus antea et postea apud *Charterhouse* pred'cam in Com' Midd' predict' falso nequiter et proditorie conspiravit consensit et agreavit cum p'fat' Rob'to Ridolp'ie suscitare et movere et excitare infra hoc Regnum Anglie totam vim et potentiam quas ip'e pred'cus Thomas Dux Norf'k et confederati sui aliquo modo valerent sive potuissent facere vel excitare infra hoc regnum Anglie ad conveniend' cum p'fat' exercit' armatorum hominu' per dictu' Regem Hispaniarum ut p'fere' mittend', et cum eodem exercitu armatorum hominu' et cum talibus aliis subditis hujus Regni Angliæ quos idem Dux Norf'k comparere et procurare potuisset conjungere cum dicto exercitu per dom' Regem Hispaniaru' ut p'fere' mittend' guerram publicam contra dictam d'nam Elizabeth' Reginam infra hoc Regnu' suu' Angliæ levare suscipere et manutenere et eandem Mariam nuper Scotorum Reginam extra custod' et possessionem ejusdem d'ne n're Elizabeth' Regine Anglie eripere et liberare, ac predictam illustrissimam et Christianissimam d'nam n'ram Elizabeth' Reginam de regali statu titulo potestate preheminentia et regimine hujus regni sui Angliæ penitus deprivare deponere dejicere et exhereditare, nec non se eundem Thomam Ducem Norf'k in matrimonio cum p'fat' Maria nuper Scotorum Regina conjungere et copulare.

Et ulterius Jur' pred'ci super sac'm suu' pred'cm dicunt et presentant quod cum p'fat' Robartus Ridolp'ie tres seperales l'r's credentiales in no'ie p'fat' Thome Ducis Norf'k pro ip'o Robarto Ridolp'ie in suis falsis nequissimis et proditoriis nuntiis pred'cis videl't unam earundem l'rarum ad p'fat' Ducem de Alva, alteram ad p'fat' Ep'm Romanum, ac tertiam ad p'fat' Phillippu' Hispaniarum Regem transferend' et transportand' composuisset et scripsisset quod postea ip'e id'm Thomas Dux Norf'k falso et proditorie intendens volens et a'io suo considerans successionem effectum et complemen' in predictis falsis et proditoriis nunciis per p'fat' Robartum Ridolp'ie ut p'fere' missis quendam Will'm Barker generosum servientem ipsius Thomæ Ducis Norf'k xx<sup>o</sup> die Martii anno regni d'ce d'ne Regine nunc tertiodecimo supradicto apud *Charterhouse* pred'cam in Comitatu Midd' predict' falso subdole et proditorie ad Guerrau' Despes ambafatorem dicti Phillippi Hispaniarum Regis misit ad declarand' ostendend' et affirmand' predicto ambafatori predicti Phillippi Hispaniarum Regis quod ip'e idem Thomas Dux Norf'k affirmabat et affirmare vellet predictas l'ras credentiales ad p'fat' Ducem de Alva Romanu' Ep'm et Phillip' Hispaniaru' regem no'ie suo compo'it et script' adeo valent' et firmiter prout ipsemet idem Thomas Dux Norf'k easdem manu sua propria subscripsisset: Et insuper iidem Jur' super sac'm suu' predictum presentant et dicunt quod predictus Robartus Ridolp'ie xxvj<sup>o</sup> die Martij anno regni d'ce d'ne Elizabeth' nunc Regine Angliæ tertiodecimo supradicto apud *Doarier* in Com' Can' extra hoc regnum Anglie ad et usque partes ext'as et transmarinas iter suu' arripuit ad perficiend' perimpend' et exequend' dict' proditoria nuncia per consensum agreement' p'fat' Thome Ducis Norf'k posteaque pred'cus Ridolp'ie



dolphie eadem nequissima et proditoria nuntia sua in partibus ex'tis et transmarinis tam prefat' Duci de Alva quam prefat' Ep'o Romano narravit retulit et declaravit et communicavit. Et quod predictus Robertus Ridolphie post predictum exit' et recessionem suam extra hoc regnum Anglie, ac post eadem falsa nequissima et proditoria nuntia sua predicta prefat' Duci de Alva narrat' declarat' et fact' una lram suam in quibusdam subdolis alienis et inconsoetis characteribus et notis Anglie dict' *Ciphers* ad prefat' Thomam Ducem Norf'k scribi fecit et misit. Quam quidem lram sic ut prefert' script' missam ip'e idem Thomas Dux Norf'k xvij<sup>o</sup> die Aprilis anno regni d'ce d'ne Elizabeth' Regine xiiij<sup>o</sup> supradict' apud *Charterhouse* predictam in Com' Midd' predict' falso et proditorie recepit et h'uit et eandem adtunc et ib'm prefat' Will'mo Barker servienti suo in lras cognitatas et comm's reducend' & decipherand' Anglie dict' *To be deciphered* lib'avit et dedit, et eandem lram in co'es et cognitatas litteras reduct' et decipheratam Anglie dict' *deciphered* ip'e idem Dux postea xxv<sup>o</sup> die Aprilis anno regni dicte d'ne Elizabeth' nunc tertio decimo supradict' apud *Charterhouse* predictam in dicto Com' Midd' falso et proditorie recepit inspexit et perlexit et penes se adtunc et ib'm falso et proditorie retinuit et servavit, per quam quidem lram predictus Robertus Ridolphie eidem Thome Duci Norf'k inter alia significavit eumque certiore fecit de benigna audientia sua quam ip'e idem Robertus h'uit apud prefat' Ducem de Alva in nequissimis et proditoriis nuntiis supradictis: Et quod idem Dux de Alva requisivit et voluit amicos et fautores confederationis et p'poit predict' paratos esse quandocunque potentia per dictum Hispaniarum regem mittend' infra hoc Regnum Anglie applicaret: Et preterea iidem Jur' super sacrum suum predictum presentant et dicunt quod predictus Thomas Dux Norf'k xvij<sup>o</sup> die Junii anno regni d'ce d'ne Elizabeth' Regine nunc xiiij<sup>o</sup> supradict' apud *Charterhouse* predict' in Com' Midd' predict' a prefat' Pio quinto Romano episcopo unam lram eidem Duci dir'cam falso et proditorie recepit per quam idem Episcopus Romanus promisit eidem Thome Duci Norf'k auxilium et supplementum pro adjuvamine predicto Mariæ nuper Scottorum Regine, ac pro et ad nequissima et proditoria propo'it et intentiones predict' exequend' et perficiend' contra legiancie sue debitum ac contra pacem dicte d'ne Elizabeth' nunc Regine Anglie coronam et dignitat' suas et in legum hujus Regni Angliæ contempt' manifestum. Nec

non in pessimum et perniciosissimum exemplum omnium aliorum in tali casu delinquent' ac contra formam diversorum Statut' in hujusmodi casu editor' et provisor' &c.

Et modo scilicet d'co instanti die Martii viz. xvj<sup>o</sup> die Januarii anno xiiij<sup>o</sup> supradict' coram prefat' Georgio Comite Salop preclari ordinis Garterii milite et hac vice Anglie Senescallo apud Westmonaster' in magna aula pl'itorum ib'm ven' predict' Thomas Dux Norf'k sub custodi' prefati Owini Hopton Milit' locum tenen' d'ne Regine dicte Turris London' in cujus custodi' preantea ex causa predicta et aliis certis de causis commissus fuit ad barram hic duct' in propr' persona sua, qui committit' prefato locumtenenti, &c. Et statim de omnibus et singulis sep'alibus prodicionibus predictis sibi superius seperatim impo'it alloquit' qualiter se velit inde acquietari, dicit quod ipse in nullo est inde culpabil' et inde de bono et malo pon' se super pares suos, &c.

Super quo predicti Reginald' Comes Rand' Will'mus Comes Wigorn' ac ceteri antedicti Comites et Barones, predicti Thome Ducis Norf'k pares instant' super eorum fidelitatibus et legianciis dicte d'ne Regine debitis per prefatum Senescallum Anglie ab inferiore pare usque ad supremum par'm illorum seperatim publice examinat' quilibet eorum seperatim dicit quod predictus Thomas Dux Norf'k de sep'alibus predictis sibi seperatim in forma predicta superius impo'it est inde culpabil' modo et forma prout per sepeales indictament' predict' superius suppo' &c.

Super quo instant' Servien' d'ne Regine ad legem, ac ipsius d'ne Regine Attorn' juxta debitis legis formam petunt versus eundem Thomam Ducem Norf'k judicium et executionem superinde pro d'ca d'na Regina h'end' &c.

Et super hoc vis' et per Cur' hic intellect' omnibus et singulis premissis Con' est quod predictus Thomas Dux Norf'k ducat' per prefat' Locumtenen' usque dict' Turrim London' et deinde per mediu' Civitat' London' usque ad furcas de *Tiborne* trahatur et ib'm suspendat' et vivens ad terram prosternat' ac interiora sua extra ventrem suum capiant' ip'oq' vivente comburent', et caput ejus amputetur quodque corpus ejus in quatuor partes dividat', ac quod caput et quarteria illa ponantur ubi d'na Regina ea assignare voluerit, &c.



NUMBER IV.

*The bringing Sir WALTER RALEIGH to Execution.\**

**S**IR *Walter Raleigh*, by Vertue of His Majesty's Writ of *Habeas Corpus*, was brought to the King's Bench Bar, at *Westminster*, where he was proceeded against, as follows.

First, the Writ, deliver'd to the Judges by Sir *Walter Apsly*, was read, purporting, That whereas Sir *Walter* being long before, in the Presence of divers Noble Personages, legally convicted of High Treason, at *Winchester*, was then and there adjudged to be hang'd, drawn, and quarter'd. After the reading of this Writ, Mr. Attorney, Mr. *Henry Yelverton*, spake, in Effect, thus.

My Lords, Sir *Walter Raleigh*, the Prisoner at the Bar, was, Fifteen Years since, convicted of High Treason, by him committed against the Person of His Majesty, and the State of this Kingdom, and then received the Judgment of Death, to be hang'd, drawn, and quarter'd: His Majesty, of his abundant Grace, hath been pleas'd to shew Mercy upon him 'till now, that Justice calls unto him for Execution:

Sir *Walter Raleigh* hath been a Statesman, and a Man, who, in Regard of his Parts and Quality, is to be pitied: He hath been as a Star, at which the World hath gaz'd; but Stars may fall, nay, they must fall, when they trouble the Sphere wherein they abide. It is therefore His Majesty's Pleasure now to call for Execution of the former Judgment, and I now require Order for the same.

Then Mr. *Fanshawe*, Clerk of the Crown, read the Record of the Conviction and Judgment, and call'd to the Prisoner, to hold up his Hand, which he did. Then was the Prisoner ask'd, What he could say for himself, why Execution should not be awarded against him?

Sir *Walter Raleigh*. My Lords, my Voice is grown weak, by reason of my late Sickness, and an Ague, which I now have; for I was even now brought hither out of it.

Lord Chief Justice. Sir *Walter*, your Voice is audible enough.

Sir *Walter*. Then, my Lord, all that I can say is this; That the Judgment which I received to die so long since, I hope it cannot now be strain'd to take away my Life; for that since it was His Majesty's Pleasure to grant me a Commission to proceed in a Voyage beyond the Seas, wherein I had Power, as Marshal, on the Life and Death of others, so, under Favour, I presume I am discharged of that Judgment: For, by that Commission I departed the Land, and undertook a Journey, to honour my Sovereign,

and to enrich his Kingdom with Gold, of the Ore whereof this Hand hath found and taken in *Guiana*; but the Voyage, notwithstanding my Endeavour, had no other Success, but what was fatal to me, the Loss of my Son, and wasting of my whole Estate.

*Being about to proceed, he was, by the Lord Chief Justice, interrupted, who spake.*

Lord Chief Justice. Sir *Walter Raleigh*, this which you now speak, touching your Voyage, is not to the Purpose, neither can your Commission any Way help you, by that you are not pardon'd; for by Words of a special Nature, in Case of Treason, you must be pardon'd, and not implicitly. There was no Word tending to Pardon in all your Commission, and therefore you must say something else to the Purpose; otherwise, we must proceed to give Execution.

Sir *Walter Raleigh*. If your Opinion be so, my Lord, I am satisfied, and so put myself on the Mercy of the King, who I know is gracious; and, under Favour, I must say I hope he will be pleas'd to take Commiseration upon me. As concerning that Judgment which is so long past, and which, I think, here are some could witness, nay, his Majesty was of Opinion, that I had hard Measure therein.

Lord Chief Justice. Sir *Walter Raleigh*, you must remember yourself; you had an honourable Trial, and so were justly convicted; and it were Wisdom in you now to submit yourself, and to confess your Offence did justly draw upon you that Judgment which was then pronounced against you; wherefore I pray you attend what I shall say unto you. I am here call'd to grant Execution upon the Judgment given you Fifteen Years since; all which Time you have been as a dead Man in the Law, and might at any Minute been cut off, but the King in Mercy spared you. You might think it heavy, if this were done in cold Blood, to call you to Execution, but it is not so; for new Offences have stirr'd up his Majesty's Justice, to remember to revive what the Law hath formerly cast upon you. I know you have been valiant and wise, and I doubt not but you retain both these Vertues, for now you shall have Occasion to use them. Your Faith hath heretofore been question'd, but I am resolv'd you are a good Christian; for your Book, which is an admirable Work, doth testify as much. I would give you Counsel, but I know you can ap-

\* People have often wonder'd how an old Sentence, that had lain dormant so long, could have been put in Execution; especially, as Sir *Walter*, by the King's Patent, had Power of Life and Death over the King's Subjects: And as what is printed in Vol. I. pag. 219. is a very short and imperfect Account of the Proceedings against that Great Man, before Sentence, we hope the Account which we have procured from authentick MSS. will be acceptable; together with the Warrant of his Execution, from *Rymer's Fœdera*.



ply unto yourself far better than I am able to give you; yet will I, with the good Neighbour in the Gospel, who finding one in the Way, wounded and distressed, pour'd Oil into his Wounds, and refresh'd him, I give unto you the Oil of Comfort; though, in respect that I am a Minister of the Law, mix'd with Vinegar. Sorrow will not avail you in some Kind: For, were you pain'd, Sorrow would not ease you; were you afflicted, Sorrow would not relieve you; were you tormented, Sorrow could not content you; and yet, the Sorrow for your Sins would be an everlasting Comfort to you. You must do as that valiant Captain did, who perceiving himself in Danger, said, in Defiance of Death; *Death, thou expectest me, but, maugre thy Spite, I expect thee.* Fear not Death too much, nor fear not Death too little; not too much, lest you fail in your Hopes; not too little, lest you die presumptuously: And here I must conclude with my Prayers to God for it; and that he would have Mercy on your Soul. And so the Lord Chief Justice ended with these Words; Execution is granted.

Sir *Walter Raleigh*. My Lord, I desire thus much Favour, that I may not be cut off suddenly; for I have something to do in Discharge of my Conscience, and something to satisfy his Majesty in, something to satisfy the World in; and I desire I may be heard at the Day of my Death. And here I take God to be my Judge, before whom I shall shortly appear, I was never disloyal to his Majesty, which I will justify where I shall not fear the Face of any King on Earth: And so I beseech you all to pray for me.

*De Warranto speciali pro decollatione Walteri Raleigh, Militis.*

A. D. 1618.  
*Rymer's Foedera*, Vol. 17.  
pag. 115.  
Edit. 1717.

**JAMES**, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To our righte Trustye and Well-beloved Counsellor Francis Lord Verulam, our Chancellor of England; Greeting.

Whereas Sir *Walter Raleigh*, Knighte, late of the Parishes of Saint *Martyn* in the Feilds, in the County of *Middlesex*, with others, hath been indicted of divers High Treasons by him committed against Us, and thereupon hath been tryed, and found Guiltye of the same, before our deare Cousine and Counsellor, *Thomas Earle of Suffolke*, then Chamberlaine of Our Household,

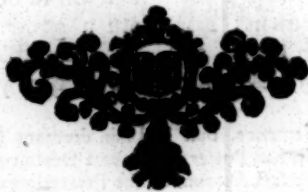
*Gilbert* late Earle of *Shrewsbury*,  
*Charles* late Earle of *Devon*,  
*Henry* Lord *Howard*,

*Robert* Lord *Cecill*, of *Essington*, then Our Principal Secretary,  
*Edward* Lord *Wotton*, then our Comptroller of our Household,

And other our Justices of Oier and Terminer, at our Citye of *Winchester*, in our Countye of *Sutthampton*, concerning Treasons, and other Offences, lately assign'd; which said Sir *Walter Raleigh* was, for the same his Treasons, by them adjudged to be drawn, hanged, and quartered, according to the Lawes and Customes of this our Realme of England, in that Case provided; which said Commission, with the said Judgment, Indictment, and the Tryall and Proceedings thereupon, were retourned, and doe remayne in our said Court of Pleas, before Us to be houlden; and although the said Sir *Walter Raleigh* be adjudged to dye as aforesaid; yet We, mynding to dispence with that Manner of Execution of Judgment, doe therefore, by theis Presents, pardon, remit, and release the said Sir *Walter Raleigh*, of and from such Execution of his Judgment to be drawne, hanged, and quartered, as aforesaid, and instead thereof, our Pleasure is to have the Head only of the said Sir *Walter Raleigh* cut off, at, or within our Palace of *Westminster*, in, or upon some fitt and convenient Place, or Scaffold, to be provided in that Behaulf, and that in such Sort, and Order, as in such Cases have been heretofore done; the said Judgment to be drawne, hanged, and quartered, or any Lawe, or other Thing, or Matter whatsoever, to the contrary notwithstanding: Willing, charging, and hereby expressly commanding you our said Chancellor, That, uppon Receipt hereof, you do forthwith direct, under our Great Seale of England, Two severall Writtes, one to the Lieutenante of our Tower of *London*, or his Deputy there, for the Delyvery of the said *Walter Raleigh* to the Sheriffe of *Middlesex*, at, or within our said Palace of *Westminster* aforesaid; and another Writt to the said Sheriff of *Middlesex*, for the receiving the said Sir *Walter Raleigh* of and from the Handes of our said Lieutenante, or his Deputye, and for the executing of him there, at some fitt and convenient Place, to be there, by our said Sheriff, erected and provided for that Purpose, in such Manner and Form as in such Cases hath heretofore bin done, or usd to be done; and theis Presents shall be your Warrant and Discharge for the same, against us, our Heirs and Successors for ever.

*Witness our Self*, at *Westminster*, the Eighth and Twentieth Day of October.

Per Breve de Privato Sigillo.



NUMBER V.

*The Argument of William Prynne of Lincoln's-Inn, Esq; \* Hill. 20 Car. I. Banc. Regis. In the Case of the Lord Connor Magwire, Baron of Iniskellin in Ireland, (the chief Contriver of the late Irish Rebellion and Massacre of the Protestant English) against whom he was assigned Councill by both Houses of Parliament.*

The Case and Plea of the Lord Magwire.

**C**ONNOR Magwire, by the Name of Connor Magwire of London Esquire, was, in Michaelmas Term last, indicted in this Court for several High Treasons committed by himself, together with Hugh Mac-Mabon and divers other Conspirators and false Traytors against our Lord the King within the Realm of Ireland in *partibus transmarinis* on the 23 Day of October, 17 Caroli. Upon his Arraignment at this Bar, after Not Guilty pleaded, being demanded, How he would be tried? he put in this Special Plea, as to the particular Manner of his Trial only, under his Counsels Hand.

That by the Statute of *Mag. Charta*, it is enacted, *That no Freeman ought to be imprisoned, &c. Nor will we pass upon him, but by the lawful Judgment of his Peers, or by the Law of the Land.* That after this in a Parliament held at Droghedab in the Kingdom of Ireland, in the 10th Year of King Henry 7th, it was enacted, *That all Statutes late made within the Realm of England concerning or belonging to the Common and Publique Weal of the same, from thenceforth should be deemed good and effectual in Law; and over that, be accepted, used, and executed within the Land of Ireland in all Points, and at all Times requisite, according to the Tenor and Effect of the same: And that by Authority aforesaid they and every of them be authorized, approved, and confirmed in the said Land of Ireland:* That before the Time of the supposed Treasons, King Charles, by his Letters Patents under the Great Seal of Ireland, bearing Date the last Day of August, in the 4th Year of his Raign, at Dublin in Ireland, did create Brian Magwire, Father of

the said Connor Magwire, Baron of Iniskellin in the County of Farmanagh in the said Realm; and granted to him and the Heirs Males of his Body, the Title, Honor, and Dignity of the said Barony, and to have a Place and Voice among the Peers and Nobles of Ireland in the Parliaments of that Realm: By virtue whereof the said Brian was seised in his Demesne as of Fee Tayl of the said Barony, and dyed seised thereof at Dublin 1 Feb. 12 Caroli, before the supposed Treasons; after whose Death the said Barony descended to him as Heir in Tail: That by virtue of these Letters Patents, before the said supposed Treasons committed, he was one of the Barons, Lords, and Peers of Parliament in the Realm of Ireland; and at the Parliament begun and held there the 16th Day of March, 16 Car. at Dublin, and continued until the 17th of August then next following, and then adjourned till the 9th of November next ensuing, and thence prorogued to the 24th of February next following, and from thence continued till the 24th of June, 17 Car. he was present as one of the Peers of the Realm of Ireland. And further saith, that on the 23d of October, 17 Car. he was taken and arrested by certain Persons to him unknown at Dublin in Ireland, and there committed to safe Custody for the Treasons pretended to be committed by him, till afterwards he was, on the 12th of June, 18 Car. by certain Persons to him unknown, brought in safe Custody, against his Will, to Westminster within the Realm of England, and then and there committed to the Tower of London, where he is yet detained. And therefore prayeth, That he may be tried and judged by his Peers of the Realm of Ireland, for the supposed Treasons in the Indictment. To this Plea of his Mr. *Aske*, the King's

\* I apprehend it neither unseasonable nor unprofitable to publish this Argument at Law concerning the Trial of Irish Peers for foreign Treasons acted by them, made by me near 14 Years past, in the King's-Bench Court at Westminster, in the Case of Connor Magwire, an Irish Baron, there indicted for High Treason, in having a principal Hand in the late bloody Rebellion in Ireland; against whom I was (by special Order) assigned Counsel, among others, by the Parliament then sitting; upon whose Plea, and a Demurrer thereunto, I first argued this new Point in Law, never formerly disputed, adjudged in open Court, *Whether an Irish Peer (or Commoner) committing Treason in Ireland, sent over from thence into England against his Will, might be lawfully tried for it in the King's-Bench at Westminster by a Middlesex Jury, and outed of his Trial by Irish Peers of his Condition, by the Statute of 35 H. 8. c. 2.?* After two solemn Arguments at the Bar, by myself and Serjeant Rolls, against, and Mr. Hales and Mr. Twissden for the Prisoner, and Mr. Justice Bacon's Argument on the Bench, his Plea was over-ruled, adjudged against him; it being resolved, *he might and ought to be tried only by a Jury of Middlesex, not by his Peers of Ireland:* Whereupon he pleading *Not Guilty* to his Indictment, was tried by a Substantial Jury (to whom he took both his peremptory and legal Challenges, which the Court allowed him of right) and after a very fair and full Trial was found Guilty by the Jury, upon most pregnant Evidence; and then condemned, and executed as a Traytor at Tyburn. *Prynne's Preface to his Argument, P. 1, 2.*

This Argument should be read after Lord Magwire's Plea in Vol. I. Page 929.  
VOL. VIII.



Attorney in this Court, hath demurred in Law; and the Prisoner hath joyned in Demurrer: And Whether *this* Plea of the Prisoner, as to his Trial by his Peers of the Realm of Ireland, be good in Law? is the sole Question to be now argued.

This Case is of very great Concernment, and yet of greater Expectation: It concerns the whole Peerage of Ireland in some Respects, on the one hand; and on the other, the Justice both of the King, Parliament, and Kingdom of England, in bringing a desperate Rebell and Arch-Traytor to condign Punishment, for the most horrid, bloody Treason against the King's Royal Crown and Authority, the Protestant Religion, and the whole English Nation inhabiting Ireland (devoted to Destruction by this Traytor and his Confederates) that ever was plotted or executed under the Sun. The Eyes of all our Three Kingdoms (highly concerned in, and deeply suffering by, this Treason) but more especially the Eyes and Hearts of our adjoining vigilant Parliament (which hath specially recommended it to this Court, and assigned my self, among others, Counsel in this Case) are intently fixed upon the final Result and Issue of it. I wish my Vacancy to study, and Abilitie to argue this publique Cause, had been such as might have satisfied Expectation, and discharged the Trust reposed in me; but other publick Services having much interrupted me therein, I shall begin to argue it for the present with the best Skill I may, and so leave it to those learned Gentlemen of the Law (if there shall be need of any further Arguments) who are provided to argue after me, to supply what is defective in this my proemiall Argument.

All Matters of Fact and Form arising in this Plea have been already admitted true, and sufficiently pleaded in Law by mutual Consent, and nothing but the meer Matter in Law rests now to be debated, which I conceive to be but one short single Point.

For though the Prisoner pleads, *That there was a Parliament, of which he was a Peer and Member, continuing in Ireland by Prorogation at the Time of his Apprehension and sending over into England; yet this Privilege of Parliament comes no ways in question as to the Point of his Trial, now only in Issue (as hath been falsely suggested to the Lords House, and intimated in an Ordinance of theirs since revoked) but relates only to his first Apprehension, which is not here in Controversie. Besides, he pleads not, That this Parliament is yet continuing and actually sitting in Ireland, of which he ought to have\* the Privilege; but that it was continued till the 24th of June, 17 Car. which is three Years since, and so intended to be long since ended: Nor pleads he, That he ought to be, or to have been tried for his Treason in the Parliament of Ireland, nor that his Privilege of Parliament ought to extend to secure him from any Apprehension or Indictment for High Treason (when the Treason is visible and real, as his is, and not imaginary only) in which Case of Treason no Privilege of Parliament is to be admitted, as hath been resolved, 8 H. 6. rot. Parl. n. 57. 31 H. 6. rot. Parl. n. 25, 26, 27. Cook's 4 Instit. fo. 25. So as the Matter of his Privilege*

of Parliament is quite out of doors, and the sole Point in Issue is but this:

*Whether a Peer of Ireland committing High Treason in Ireland, for which he is there apprehended, and afterwards by Order of Parliament here brought thence into England against his Will, may be indicted and tried for that Treason in this Court of King's-Bench by a Jury of Middlesex only, not by his Peers of Ireland, by virtue of the Statute of 35 Hen. 8. cap. 2?*

And under favour, I conceive in some Clearness affirmatively, *That he may and shall be tried here by an ordinary Jury of Middlesex, and outed of his Peerage, by virtue of this Act.*

The Question arising meerly upon the Act it self, which is very short, I shall first recite it, and then draw my Arguments out of the very Intention, Words, and Bowells of it.

The Act of 35 Hen. 8. cap. 2.

**F**Orasmuch as some Doubts and Questions have been moved, That certain kinds of Treasons, Misdemeanors, and Concealments of Treasons, done, perpetrated, or committed out of the Kings Majesties Realm of England, and other his Graces Dominions, cannot, ne may, by the Common Lawes of this Realm, be enquired of, heard, and determined within this his said Realm of England; for a plain Remedy, Order, and Declaration therein to be had and made, be it enacted by Authority of this present Parliament, That all manner of Offences being already made or declared, or hereafter to be made or declared by any the Lawes and Statutes of this Realm, to be Treasons, Misdemeanors of Treasons, or Concealments of Treasons, done, and perpetrated, or committed, or hereafter to be done, perpetrated, or committed, by any Person or Persons out of this Realm of England, shall be from henceforth inquired of, heard and determined, before the Kings Justices of his Bench, for Pleas to be holden before himself, by good and lawfull Men of the same Shire where the said Bench shall sit and be kept; or else before such Commissioners, and in such Shire of the Realm, as shall be assigned by the Kings Majesties Commission, and by good and lawfull Men of the same Shire, in like Manner and Form, to all Intents and Purposes, as if such Treasons, Misdemeanors of Treasons, or Concealments of Treasons, had been done, perpetrated, and committed within the same Shire where they shall be so inquired of, heard, and determined, as is aforesaid.

Provided always, That if any the Peers of this Realm shall happen to be indicted of any such Treasons or other Offences aforesaid, by Authority of this Act, that then after such Indictment they shall have their Tryall by their Peers, in such like Manner and Form as hath been heretofore accustomed.

\* See 3 E. 4 c. 1. in Ireland.

From this Act I shall deduce several Arguments and Conclusions to prove, that the Prisoner at the Bar, though a Peer of Ireland, shall be tried by an ordinary Jury of Middlesex here, not by his Peers in or of Ireland, for the Treasons committed in Ireland, whereof he stands here indicted.

For my more methodical proceeding, I shall divide the single Point in Controversie into these Three subordinate Questions.

I. *Whether this Statute extends to Treasons committed in Ireland, by Irish Commoners?*

II. *Whether it reacheth to Treasons in Ireland perpetrated by Irish Peers, as well as by Irish Commons?*

III. *Admit it extends to Irish Peers as well as Commoners, whether it doth not then inevitably out them of their Trials by Irish Peers, and subject both of them alike to a Trial at this Bar, by a Middlesex Jury?*

For the first, *Whether this Act extends to Treasons committed in Ireland, by Irish Commoners?* There is but little Doubt of it. For first, it is as clear as the Sun at Noon-Day, that this Act extends to all Treasons done or perpetrated in Ireland by Irish Commoners; for the main Scope and Intent of this Law being to make all manner of Offences then made or declared, or hereafter to be made or declared to be Treasons, Misprisions of Treasons, or Concealments of Treasons, by any Law or Statutes of this Realm, done, perpetrated, or committed by any Person or Persons out of England, inquirable or triable within this Realm, without any Scruple or Difficulty, either in this Court, or before such Commissioners in such Shire of this Realm, as the King by his Commission shall assign (the very Sum and Substance of this Act, as the express Letter thereof resolves,) the Realm of Ireland being out of this Realm of England, and no Part thereof, and Treasons therein committed by Commoners, being Treasons done and perpetrated out of this Realm of England; (as is clear by 20 H. 6. f. 8. a. b. 19 H. 6. 53. b. 32 H. 6. 25. b. 2 R. 3. f. 12. 1 H. 7. f. 3. Plowden 368. b. Dyer, f. 360. b. Cook 7 Report, f. 22, 23. Calvin's Case, 1 H. 5. c. 8. 4 H. 5. c. 6. Cook's Instit. p. 11. 18.) These Treasons must certainly and most necessarily be both within the Intent and Words of this Law, and so consequently triable in this Court by an ordinary Jury of Middlesex, without any Scruple or Difficulty: The rather because Ireland, though out of this Realm of England, is yet Part of the King's Dominions, and a subordinate Kingdom, united and annex'd to the Crown of England, govern'd by the Laws of England, and bound by Acts of Parliament made in England in many Cases, as is resolved, and undeniably evidenced by Pat. 6. Johan. m. 6. n. 17. Rot. Pat. 8 Johan. m. 1. Claus. 12. H. 3. m. 8. Pat. 30 H. 3. m. 3. 14 H. 3. The Statute of Ireland, Pat. 5 E. 3. pars 1. m. 25. 11 E. 3. c. 2, 3, 4, 5. 27 E. 3. c. 3, 18. 13 E. 1. Stat. de Mercat. 1 H. 5. c. 8. 4 H. 5. c. 6. 1 H. 6. c. 3. 3 H. 7. c. 8. 1 H. 8. c. 5. 32 H. 8. c. 4. 35 H. 8. c. 2. 32 H. 6. Statutes of Ireland, c. 1. 8 E. 4. in Ireland, c. 1. 10 H. 7. in Ireland, c. 4, 5, 22. 7 H. 8. in Ireland, c. 1. 28 H. 8. in Ireland, c. 2, 3, 5, 6, 7, 8, 13, 15, 18, 19. 33 H. 8. in Ireland, c. 1. 1 H. 7. f. 3. Kelway f. 202. b.

Cook's 7 Rep. f. 22, 23. Calvin's Case, 1 Instit. f. 141. b. 4 Instit. f. 349, 350, &c. 3 Instit. p. 18. Mr. Saint John's Argument at Law at Strafford's Attainder, vide Rushworth's Strafford's Trial, p. 694, et Seq. and therefore Treasons there committed are more apt and proper to be tried here within the Letter and Intention of this Law, than Treasons done in France, Spain, or any Parts else, out of the King's Dominions, where our Laws and Acts of Parliament are not obligatory.

II. This Statute (as I conceive) was principally made to punish Treasons, Misprisions of Treasons, and Concealments of Treasons in Ireland, where they were more frequently done and perpetrated, than in any or all Parts of the World out of this Realm of England, as our Histories and the \* Irish Statutes record: And the horrid general Treason, Insurrection and Rebellion in Ireland (much like this for which the Prisoner is indicted) mention'd in the Statute of Ireland, 28 H. 8. c. 1. but seven Years before this Act, with other frequent Treasons and Rebellions there, were, no Doubt, the chiefest Ground of making this new Law. And that which puts it out of all Dispute, is the Statute of 28 H. 8. made in the Parliament at Dublin in Ireland, c. 7. which reciting the Statute of 26 H. 8. c. 13. made in England, concerning Treasons, and enacting, (as this of 35 H. 8.) "That if any of the King's Subjects, Denizens, or others, do commit or practise out of the Limits of this Realm (of England) in any outward Parts, any such Offences, which by this Act are made, or heretofore have been made Treason, that then such Treason, whatsoever it be, that shall so happen to be done or committed, shall be enquired and presented, by the Oaths of Twelve good and lawful Men, upon good and probable Evidence and Witness, in such Shire and County of this Realm, before such Persons as it shall please the King's Highness to appoint by Commission under his Great Seal, in like Manner and Form as Treasons committed within this Realm have been used to be enquired of and presented; and that then upon every Indictment and Presentment founden and made of any such Treasons, and certified into the King's Bench, like Process, and other Circumstance shall be there had and sued against such Offenders, as if the same Treasons so presented had been lawfully found to be done and committed within the Limits of this Realm, &c." Adds this memorable Clause thereto, *Considering then this Statute made in the Realm of England, is most beneficial and expedient to have due Execution within the King's Land and Dominion of Ireland, especially in respect of the high Rebellion here lately committed, that the odible Infamy against the King and Queen in the same Act expressed, and other Offences, Abuses, and Abominations there mentioned, principally have been promulged, pronounced, done and attempted within this said Land, Be it therefore established, ordained, and enacted, by Authority of this present Parliament, That the aforesaid Statute and Ordinance, and every Thing and Things therein contained, be established, confirmed, accepted, deemed, judged and taken for*

\* See the Statutes of Ireland, 3 E. 2. c. 4. 18 H. 6. c. 2, 3. 25 H. 6. c. 4, 5. 28 H. 6. c. 1. 1 E. 4. c. 2. 5 E. 4. c. 6. 18 E. 4. c. 2. 10 H. 7. c. 6, 8, 9, 10, 13, 17, 19. 28 H. 8. c. 1, 3, 9, 11. 3 Phil. & Mar. c. 11. 1 Eliz. c. 6, 17. 27 Eliz. c. 1. 28 Eliz. c. 8, 9. 11 Jac. c. 4. and the Annals of Ireland.



a good and right Law within the King's Land and Dominion of Ireland; and to be as good, effectual, and of the same strength and quality, effect, force and virtue, to all intents and purposes within the said Land, as the same is or ought to be in the Realm of England; and that the said Statute and Act made in England, and every thing therein contained, shall have relation, and take effect within this Land of Ireland against all Offenders contrary to the Form thereof, &c. Now that Act of 26 H. 8. c. 13. with this of 35 H. 8. c. 2. being principally made and intended for the Treasons done and committed in Ireland; as this Irish Parliament resolves in terminis, and being most beneficial and expedient for that Realm; it would be very illegal, yea irrational, absurd, impolitick, and improvident to exclude Ireland out of this Law, where Treasons were most frequent, most dangerous to our Kings and Realm, and to extend it only to other Places out of the Realm, where Treasons were seldom done or perpetrated, and nothing so perilous to the King and Realm of England, as Treasons, Rebellions in Ireland have usually been in former and later Ages.

III. It hath been adjudged by all the Judges of England both in *\* Orouk's Case*, 33 Eliz. and in *Sir John Perrot's Case*, 24 Eliz. cited in *Calvin's Case*, *Cook's 7 Report*, f. 23. a. in his *1 Institutes on Littleton*, f. 26. b. 3 *Institut.* p. 11, 24. and so was it agreed without any Argument in *Hugh Mac-Mabone's Case*, this last Michaelmas Term (the Prisoner's Confederate in this horrid Treason) that Treason committed in Ireland itself by an Irish Commoner, is triable in this Court by this very Statute, (contrary to the subitane extrajudicial Opinion of *Dyer*, M. 19 & 20 Eliz. fol. 360.) resolved since to be no Law: Seeing then it hath been thus frequently resolved heretofore, and in Case of the Treasons now in question this very last Term without any Scruple; That an Irish Commoner committing Treason in Ireland, and brought over from thence hither against his Will, is triable in this Court by a Middlesex Jury; there is no Doubt at all of the first Question, but that this Statute extends to Treasons committed in Ireland by Irish Commoners, and the Doubt (if there be any) will rest merely in the second Point, which I am already arrived at; namely,

*Whether this Act extends to Treasons perpetrated in Ireland by Irish Peers, as well as by Irish Commoners?* And under Correction, I conceive, with much Clearness, that it doth, for these ensuing Reasons.

1. From the Generality and Universality of the Act itself; wherein I shall observe a four-fold Universality, which supplies me with four undeniable Arguments, to prove Irish Peers within this Law, as well as Irish Commoners.

The first, is a Universality of the Kinds of Offences specified in the Act, in these general Terms; *All manner of Offences being already made or declared, or hereafter to be made or declared by any the Laws or Statutes of this Realm, to be Treasons, Misprision of Treasons, or Concealment of Treasons, done or perpetrated out of this*

*Realm of England; shall be enquired of by the King's Justices of his Bench, &c.* Now these general Words, *All manner of Offences, &c.* must necessarily extend to all manner of Treasons perpetrated or committed out of this Realm by Peers as well as Commoners; to this Treasons of the Lord Magwire, as well as to the Treasons of *Mac-Mabone*, Esq; they being the self-same Treasons in Substance, and a manner of Treasons specially made and declared by the Laws of this Realm, since there are no restrictive Words to confine these general Clauses of Treasons only to Commoners, and no express Exception for the Offences or Treasons of Irish Peers to be found within the Statute; else there would be a Repugnance and Contradiction between the Text and the Gloss, and this general should be turned into a specific in respect of the Traitors offending: Therefore this general Clause extending to all Treasons whatsoever done or perpetrated out of the Realm, must necessarily extend to the Treasons of all Irish Peers as well as Commons; and so both of them, by the Words and Intention of this Law, shall be triable in this Court.

The second is, a *Universality of Time*. *All manner of Offences already made or declared, or hereafter to be made or declared, Treason, &c. done, perpetrated, or committed, or hereafter to be done, perpetrated, or committed, shall be enquired of by the King's Justices of the Bench, &c.* which extends to all former Treasons done out of the Realm at any Time before the making, and to all future Treasons since the passing of this Act: Now this Universality of Time extends as well to the Treasons of Irish Peers as Commoners, to the Treasons of Baron Magwire as well as of Mr. *Mac-Mabone*, both being alike Treasons committed after this Act.

The third is a *Universality of Place*: *All manner of Treasons done, perpetrated, or committed out of this Realm of England*, that is, in any Place whatsoever out of the Realm of England, be it in Ireland, Scotland, France, Spain, Germany, Italy, Barbary, Turkey, the East or West-Indies, as was resolved in *Dr. Storie's Case*, Hil. 13 Eliz. *Dyer* 298. b. 2 & 3 *Phil. & Mar. Dyer* 131, 132. Now this extends generally to all foreign Treasons committed by Peers as well as Commons, and so to the Treason of the Prisoner at the Bar, it being done in Ireland, out of this Realm of England, and so fully within the Act.

The 4th (which is fatal and unanswerable) is a Universality of Persons, coupled together with all the three former Generalities in these express Words: *All manner of Offences made Treason, &c. done, perpetrated, or committed By any Person or Persons, out of this Realm of England, shall be from henceforth enquired of, heard and determined before the King's Justices of his Bench, &c.* Now any *Person or Persons* being a universal Expression, equivalent to all manner of Persons whatsoever, collectively, or, to all and every Person whatsoever, distributively, extends to Irish Peers, as well as Commoners, yea, to all Subjects, of all Ranks whatsoever, within the

\* See Mr. St. John's Argument against the Earl of Strafford, in *Rushworth's Strafford's Trial*. P. 694.

† See *Cook's 3 Instit.* p. 34.

Compass of this Law, in regard of the manner of Trial, but such only who are excepted out of it by special Proviso. Now *Irish* Peers are none of those Persons excepted, as I shall prove anon.

That these Words, *any Person or Persons*, extend to Peers as well as Commoners, where there is no Exception of Peers, is undeniable.

First, Because a Peer is a Person, though of a higher Rank or Degree than an ordinary Commoner, or Freeman, and one kind of Person in Law; therefore within these Words, *any Person or Persons*.

Secondly, Because general Laws, made for the common good Safety of the Realm, and Punishment of the grand Crime of High Treason, are like to God himself, \*no Respecters of Persons, but bind and punish all alike. Therefore *any Person or Persons*, in such a publick Law as this, made for the common Good, Safety, and Punishment of the greatest Treasons, Evils, must necessarily include all Persons, Subjects whatsoever, and except none, especially the greatest, whose Examples and Offences are commonly most dangerous and pernicious.

Thirdly, In all publick Acts whatsoever, these Words, *any Person or Persons*, extend to Peers as well as Commoners; and I know no one Precedent to the contrary. To instance in some few Acts, instead of many: In the Statutes of 26 H. 8. c. 13. and 5 and 6 E. 6. c. 11. concerning Treasons, *Any Person or Persons*, or any of the King's Subjects, Denizen, or others, that shall commit or practise Treason out of the Limits of this Realm, in any outward Parts, extend to Peers as well as Commons; therefore, in this Act of the same Nature. So in the Statutes of 1 Ed. 6. c. 1. 2 and 3 E. 6. c. 1. 5 and 6 E. 6. c. 1. and 1 Eliz. c. 2. *If any Person or Persons shall deprave or revile the most blessed Sacraments, or the Book of the Common Prayer, &c.* In the Statute of 1 Eliz. cap. 1. and also of 5 Eliz. cap. 1. *If any Person or Persons, &c. shall extoll, &c. the Power of the Bishop of Rome, or of his See.* 13 Eliz. c. 1. *If any Person or Persons shall bring in, or put in ure any Bull from the Bishop of Rome, Agnus Dei, Pictures, Crosses, &c.* In the Statute of 23 Eliz. c. 2. *If any Person or Persons shall with a malicious Intent speak any false or seditious News of the Queen, &c.* In 27 Eliz. c. 2. *If any Person or Persons shall barbour or contribute any Money to the Maintenance of any Jesuits, Priests, &c.* In all these Acts, (to pretermitt many others) the Words, *any Person or Persons*, extend to Peers as well as Commons, as is resolved in the Bodies and Provisos of all these Acts: Yea, in the Statute of 25 E. 3. c. 2. of Treasons (though a most penal Law) the Words are only, *If a Man do compass or imagine the Death of the King; If a Man do levy War against the King in his Realm, &c. If a Man counterfeit the King's Broad or Privy-Seal, or his Money, &c.* Yet it hath been resolved without Dispute in all Times, and so agreed by Sir Edward Cook, *Institute* 3. p. 4, 5. That this Word, *a Man*, extends to both Sexes alike, including Women as well as Men, Peers as well as Commoners, Lords as well as Peasants; yea all Ranks, Callings, Conditions of Men who are Subjects; and that

this Word *Man*, in the singular Number only, extends to many Men, to any Number of Men committing any of these Treasons jointly, as well as to a single Man, or Traitor, because it is a general Law, made for the Safety of the King's Person, and the Realm. Much more then must *any Person or Persons*, in this Statute, being both in the singular and plural Number, and in common acceptation, a far more universal, general, and comprehensive Expression than this of *a Man*, in 25 E. 3. c. 2. extend equally to all Sorts, Sects, and Degrees of Men, as well as it, and so to Peers as much as it, and to Peers as well as to Commons, as it doth in the Statutes of 25 H. 8. c. 22. 26 H. 8. c. 13. 27 H. 8. c. 2. 33 H. 8. c. 12 and 20. 5 E. 6. c. 11. 1 Mar. c. 6. 1 and 2 Phil. & Mar. c. 9, 10, 11. 5 Eliz. c. 1. 13 Eliz. c. 2. 18 Eliz. c. 1. 23 Eliz. c. 1. 27 Eliz. c. 2. 3 Jac. c. 4. concerning Treasons.

Secondly, My second Argument to prove *Irish* Peers within this Statute, is, because *Irish* Commons are within its Verge, even for Treasons committed in *Ireland*, as hath been adjudged in the fore-cited Cases of *Orouk*, Sir *John Perrot*, and *Mac-Mabone*: For Laws and Law-givers being no Respecters of Persons, where the Offences be the same, and there being no Clause, Word, or Syllable in this Statute extending to *Irish* Commoners Treasons, but which doth, may, and ought, by the self-same Justice, Reason, and Equity, to extend to the Treasons of *Irish* Peers, (this Statute making no Distinction between the one and the other) and the Commons of *Ireland* having as absolute a Right and Inheritance in their native Privilege of being tried by their Peers in *Ireland*, (which yet is taken away by this Act in Case of Treason) as the Peers in *Ireland* have in their Peerage (to be tried there by their *Irish* Peers:) We must not, yea we cannot, in Point of Justice, distinguish between the one and the other, where the Law itself makes no Distinction: Therefore, since the *Irish* Commoner is undoubtedly within the Words and Scope of this Act, to be tried at this Bar, by a *Middlesex* Jury, the *Irish* Peer (unless we will judge with Respect of Persons, and coin a Distinction not warranted by this Act) must be also tried in the self-same Manner. The Law is the same, the Crime is the same, both in *Magwire's*, and in *Mac-Mabone's* Cases; therefore the Trial, and Judgment too, must, in Law and Reason, be the same in both.

Thirdly, It will be granted me, without Dispute, That if an *Irish* Peer commit Treason in any foreign Parts, out of *England* and *Ireland*, as in *Spain*, *France*, *Flanders*, *Italy* or *Germany*, he shall be tried in this Court, by an ordinary Jury, if Freeholders, and not by his Peers in *Ireland*, by vertue of this Act. Nay, if he commit Treason in *Ireland*, and fly into *England*, he may, and shall be tried for that very Treason, by an ordinary Jury, at this Bar; § because by flying his Country, and a legal Trial there, he hath outed himself of the Benefit of his Peers. Therefore it extends to *Irish* Peers, even for Treasons done in *Ireland*, else they could not be triable here in any of these Cases, which are granted on all Hands to be Law.

\* Acts x. 3, 4. Rom. ii. 11. Eph. vi. 9. Col. iii. 25. 1 Pet. i. 17.

† See 25 H. 8. c. 3, 10, 13. 26 H. 8. c. 2. 32 H. 8. c. 4, 7, 9, 13. 5 Eliz. c. 9, 14, 15, 21, 22, 23. 8 Eliz. c. 2, 3, 4. 13 Eliz. c. 8. 13, 14 Eliz. c. 3. 1 and 2 Phil. and Mar. c. 3. 1 Eliz. c. 6.

§ See Cook's 3 Instit. p. 31.



Fourthly, It is evident by the Proviso in this Act, that *English* Peers committing any manner of Treasons out of this Realm, are triable for it in *England*, by virtue of this Law, as well as *English* Commoners, though they were not so by the Common Law. Therefore *Irish* Peers committing Treasons, shall be within it likewise, and so triable here as well as *Irish* Commons, else they should be in far better Condition than *English* or *Scottish* Peers, and quite exempted out of this Act. Now the same Words that bring *English* Peers within this Law, must of Necessity hook in *Irish* Peers too, there being no Clause which exempts or includes the one more than the other.

Fifthly, The very Letter, Intent, and Scope of this Act (as appears by the Body of it, and likewise by the Statutes of 26 H. 8. c. 13. and 5 and 6 E. 6. c. 11. to the same Effect) was, to make all Treasons done or committed out of *England*, by any Person or Persons whatsoever, triable in *England*, either before the Justices in this Court, or \* before special Commissioners in some other Counties; but to be still triable within this Realm, as the Words (*All manner of Treasons hereafter to be done, perpetrated, or committed by any Person or Persons, out of the Realm of England, shall be from henceforth enquired of, heard, and determined before the King's Justices of his Bench, &c.*) clearly resolve in direct Terms: Therefore to make the Treasons of *Irish* Peers committed in *Ireland*, or elsewhere, triable here in *England*, as well as the Treasons of *English* Peers, or *Irish* Commoners. And to send them back into *Ireland*, to be there tried by their Peers, when once they are here in Prison, and indicted in this Court, by exempting them out of this Act, contrary to the very Letter and Intent of the Law, is to run Point-blank against the very Words and Meaning of this Law, and the Law-makers: Therefore he must, by this Act, be tried at this Bar, and that by an ordinary Jury only, as I shall prove anon.

Sixthly, The very Scope and sole Purport of this Act, is not to make new Treasons, or Traitors, which were none before, but to bring real Traitors only, for Treasons formerly made, or hereafter to be made and declared Treasons by the Laws and Statutes of this Realm, to exemplary Punishment in this Kingdom, for the Peace and Preservation of the King, Realm, and the better Execution of Justice (the very Life of Laws) upon Delinquents only of the highest Rank, for the most transcendent Crimes of High Treasons, or Misprision, or Concealments of Treasons, not for Felonies, or Petit Treasons; which Consideration must necessarily induce us, for the common Good, to give it the largest, fullest, and most equitable Construction that may be. Thus the Judges, in former Times, have always interpreted it, as appears by *Dyer*, f. 132, 298. *Cook's 7 Rep. Calvin's Case*, f. 23. a. his first Institut. on *Littleton*, f. 26. his third Institut. p. 24. and in *O'ronk's Case*, wherein the Judges resolved, First, That the Statute of 1 Mar. Sess. 1. repealing all former Treasons, but those within 25 E. 3. and of 1 and 2 Phil. and Mar. c. 10.

enacting, *That all Trials hereafter to be had for any Treason, shall be had and used only according to the due Course of the Common Law of this Realm, and not otherwise*, extends not to the taking away of foreign Treasons, or their Trials, by this Law. And in *O'ronk's Case*, they extended it by Equity, beyond, and in some sort, against the Letter of the Law itself; for he standing mute, and refusing his Trial, was thereupon condemn'd and executed for a Treason committed by him in *Ireland*, though the Words of the Statute are; *The Treason shall be enquired of, heard, and determined before the Justices of the King's Bench, by good and lawful Men of the same Shire, where the said Bench shall sit*; and the Act speaks nothing at all of standing mute. But this being a publick Law for the common Good, to bring Traitors only to their Trial and just Punishment, his Refusal to put himself upon his Trial, was adjudged to be a Determination and Conviction of his Treasons within the Act; else any Traitor, by standing mute, might evade and frustrate this good Law. If then this Statute may thus be construed by Equity, and dilated beyond the Words, to one who stands mute, for a Treason done in *Ireland*; much more may it be extended to a Treason by an *Irish* Peer, who is fully within the Words and Intent of it, as I have already manifested: And it would be a most pernicious Gloss which should either elude or nullify this Beneficial publick Law.

Seventhly, It is clearly resolved in and by our Parliaments, 13 E. 1. Proem. 13 E. 1. of Statute Merchants, 21 E. 3. rot. parl. n. 67. in the Statute of 5 H. 5. ch. 6. and in divers of our Law Books, *That Acts of Parliament made in England, wherein Ireland is either specially named, or generally and necessarily included, do bind those in Ireland, both Commoners or Peers alike*. This therefore being such a Law, extending and binding those in *Ireland*, as hath been resolved in the fore-cited Cases, it must certainly bind both the Peers and Commons of *Ireland*, to a Trial at this Bar, for Treasons done in *Ireland*, when the King and Kingdom deem it necessary or expedient to try them here in *England*.

Eighthly, The Proviso in this Act, for Trial of Treasons done out of this Realm, by Peers within the same, extends only in positive Terms to Peers of this Realm of *England*, because they only are Peers within *England*, and so only triable by their Peers, for foreign Treasons within the same, not to Peers of *Ireland*, who are no Peers at all, nor triable by their Peers within this Realm of *England*; therefore this Proviso extending only to Peers of this Realm, excludes all other foreign Peers, whether *Irish* or *Scots*, from any Trial by their Peers in *England*, for Treasons acted out of it.

Ninthly, There is very great Reason why natural *Irish* Peers and Barons should be within the Compass of this Law as well as Commoners, and rather they than any other foreign Peers; because, as our § Historians, the *Irish* Annals, Statutes, and our Records do testify, ever since their Conquest by King *Henry* the Second, and Submission to the Kings of *England*, they have frequently (almost every Year,) in most King's

\* See 26 H. 8. c. 13. 1 E. 6. c. 11.

† 1 H. 7. Co. 7. Rep. *Calvin's Case*, f. 16, 17, 23. *Cook's Instit.* 1. p. 33. Mr. St. John's *Argument at Law*, at *Strafford's Attainder*, in *Rushworth*, Vol. 8. p. 698.

§ Mar. Paris, An. 1230. Mr. *Cambden's Ireland*, p. 114, to 140. The *Annals of Ireland*, in Mr. *Camb. Britan.* p. 154, 156, 157, 158, 159, 169, 162, 163, 164, 165, 166, 167, 168, 169, 170 to 201.

Reigns, broken forth into private, petit, or general Rebellions and Insurrections against the *English*, (as I could instance in sundry Particulars) in which Rebellions I commonly find a *Magwire*, a *Mac-Mabon*, and *Oneal*, in the Van, as Ring-leaders of all the rest; as they were in this last Rebellion, wherein most of the native *Irish* Peers and greatest Septs, have been deeply engaged, as principal Conspirators. Among other Rebellions I find in Story, and (which is more authentic) in the exprefs Statute made in the Parliament at *Dublin* in *Ireland*, Anno 28 H. 8. c. 1. \* (but seven Years before this Law;) That *Gerald Fitz-Gerald*, Earl of *Kildare*, the Earl of *Desmond*, with divers others of the *Irish* Peers and Gentry, conspiring together to extirpate the *English*, and deprive the King of his Sovereignty in *Ireland*, did send to the *French* King, the Emperor, and Bishop of *Rome*, for Aid and Assistance for taking the same Land out of the King's and *English* Possessions; and thereupon, with Banners display'd, and great Forces, traiterously invaded the King's Dominions there; besieged the City and Castle of *Dublin*, murder'd the King's good Subjects, who withstood them, and resisted the King's Forces sent from hence, &c. for which they were all, by this Act, attain'd of High Treason. The like general Rebellions have there broke forth sundry Times, both before and since that Act, but none so generally, dangerously, and bloodily, as this for which the Prisoner at the Bar stands indicted. The Treasons therefore, in *Ireland*, being commonly so frequent, so general, wherein most of the native *Irish* Peers (and some of the *English* Extraction too) were usually chief Actors; there was very great Reason, Policy, and Justice too, why such a Law as this should be made to reach to *Ireland*, and why, in such Cases as these, (Rebellions there being so universal, and most of the *Irish* Nobility Conspirators, and Parties in them) that these Peers, and the chiefest Conspirators, when surprized, should be presently sent over from thence into *England*, and tried there for their Treasons.

First, To secure their Persons from Escapes and Rescues, which might be there more easily procured, especially when and where the *Irish* Rebels are Masters of the Field; as the Statute of 17 H. 7. in *Ireland*, c. 14. resolves.

Secondly, To avoid a † Failure of Justice there, when by reason of the many *Irish* Peers there out in actual Rebellion, or by means of Alliance of most other Peers to them, or of the Flight of other thence, or the Employment of them in Service, or Places of Trust, or by reason of the Interposition of the Rebels Forces between them and the Place of their Trial there, a competent Number of indifferent *Irish* Peers, for a speedy Trial, cannot be assembled with Safety or Conveniency in *Ireland*, to try a rebellious Traitor by his Peers there; which obvious Defects are all supply'd by this Act.

Thirdly, To prevent all Partiality and Injustice in such Cases, which might happen in Trials by Peers in *Ireland*, either by Consanguinity, or Alliance of the Peer to be tried to the *Irish* Peers

who are to try him, or by Confederacy of the Triers in the same Treason with the Party tried; or through Fear of Mischief or Revenge upon the Triers, Jury, Witnesses, and Judges, by the tried Rebel's Friends, Kindred, and Confederates, in case he should be condemn'd by them, and executed (none being so vindictive and bloody in this kind as the *Irish*.) Upon all which weighty Reasons, there was a special Cause, why, both in Justice, Policy, and Prudence; all *Irish* Peers, who by publick Rebellion commit High Treason in *Ireland*, should be sent over and tried here by ordinary Juries, to prevent the forenamed Mischiefs and Failure of Justice, and bring them to condign Punishment. Now in this Case here in Judgment at the Bar, all these recited Reasons hold: For, First, most of the *Irish* Peers were in actual Rebellion when the Prisoner was sent over; most of the *English* and Protestant *Irish* Peers there, either murder'd, or forced to fly thence, or so dispersed and employ'd, that they could not assemble a competent Number of indifferent Peers to any Place, with Conveniency; to try him in *Ireland*. Secondly, the Enemies, and *Irish* Rebels, were then Masters of the Field in most Places, the Prisoner in Danger to be rescued by Force from them, or by Treachery likely for to escape out of their Hands, and the Times so troublesome, as would admit no Leisure for such a Trial. Thirdly, most of the *Irish* were ally'd to *Magwire*, or engaged with him in the self-same Treason and Rebellion; and so neither in Law, Justice, or Prudence, fit or indifferent Persons to pass upon his Trial in this Case of most publick Concernment. Fourthly, the Judges, Witnesses, and Peers, that should try him there, would have been in extream Peril of their Lives, and of exemplary publick Revenges from their Confederate Rebels, who threaten'd Revenge, as appears by *Mac-Mabon's* Speech (*Magwire's* Confederate) to the Justices upon his first Examination: *I am now* (said he) *in your Hands, and you may do with me what you please: But I am sure within few Days I shall be revenged*; and by like Words of Revenge used by *Owen Oneil* in *Flanders*, so soon as he heard *Magwire* was apprehended. Fifthly, If he should now be sent back from hence into *Ireland*, to be tried; the Rebels, and his Party, are there so predominant, that scarce any Witnesses, nor Peers, nor Judges either, would or durst there to appear openly against him; or else such Means would be made to delay or elude his Trial and Execution, that by some Device or other, there would, questionless, be a Failure of Justice against him. Therefore, for all these weighty Reasons, he may, and ought, by all Rules of Policy, Equity, and Justice, to be arraign'd and tried only at this Bar, by vertue of this Act, which so clearly extends unto him; *That so the Blood of § above One Hundred and Fifty Thousand innocent Protestants, shed in Ireland, in less than four Months Space, by means of this Rebellion, which cries aloud to Heaven and Earth for Revenge against this great Contriver and Arch-promoter of it, may not go unrevenged in a way of pub-*

\* See 1 E. 3. rot. parl. n. 4, 5, 6. 6 E. 3. n. 11. 6 E. 3. Parl. 2. n. 3. 7 R. 2. n. 4. 13 R. 2. n. 2.

† Upon which Ground Writs of Error lie in the *King's Bench* in *England*, to reverse erroneous Judgments in the Courts and Parliaments of *Ireland*, *Cook's 4 Inst.* p. 352. *Mr. St. John's Argument at Law against Strafford*, in *Rushworth's Collections*, Vol. 8. p. 696, 698.

§ *Dr. Jones*, and other printed Relations concerning the *Irish* Rebellion.



lick Justice, to our eternal Infamy. I have quite done with the second and main Question, and proved an *Irish* Peer to be within the Statute, as well as an *Irish* Commoner.

I shall now proceed to the last Point, arising from the Manner of this Plea, that he may be tried by his Peers, not expressing where or how, and intimating that he would be so tried here in *England*. It is briefly this: *Admitting an Irish Peer to be triable in England for a Treason committed by him in Ireland, whether this doth not inevitably out him of his Trial by Irish Peers, and subject him to a Trial at this Bar by an ordinary Jury, as well as an Irish Commoner? And I conceive without any Scruple, affirmatively, that it doth, for these undeniable Reasons:*

1. Because *Irish* Peers are Peers only in *Ireland*, not in *England*; and cease to be such in Judgment of Law so soon as ever they arrive in *England*, both personally in themselves, and relatively to others, being here in Judgment but mere Esquires, not Lords, and are to be sued as such, not as Lords or Peers, even as Peers of *Scotland*, *France*, or *Spain* are, as is resolved and adjudged 11 E. 3. *Fitzb. N. Br.* 473. 8 R. 2. *Process*, *Fitzb.* 224. 20 E. 4. 6. *Brook*, *Nesme de Dignity*, 49 M. 19 & 20 *Eliz.* *Dyer* 360. b. *Cook's* 7 Rep. f. 15, 16. *Calvin's Case*, Co. 9 Rep. f. 117. the Lord *Sancher's Case in Point*, and *Cook's* 3 *Instit.* p. 30. The Prisoner then being no Peer in *England*, it is impossible that he should be tried in *England* by his Peers.

2. Because no such way of Trial was ever yet heard of in any Age, of any *Irish* or other foreign Peer, tried here in *England*, either by *English* Peers, or by his *Irish* or foreign Peers; therefore such a Trial shall not, nor can be had or admitted now.

3. Because neither the King's Bench, nor the Commissioners before whom the Statute limits these foreign Treasons to be tried, nor yet the High Steward of *England* (if any such should be created) have any Power or Jurisdiction to summon a Jury of Peers out of *Ireland* to appear before them here in *England* upon such a Trial as this; neither are the Peers of *Ireland* bound by any Law to appear or attend as Peers on any such Service or Trial here, being Peers, and bound to serve as Peers (which their Patents express) only in *Ireland*, and no Peers here: Therefore a Trial by his *Irish* Peers here in *England*, is an Impossibility, as well as an Illegality.

4. Admit a Jury of Peers might be summoned and sent from thence, yet it would be a great Delay of Justice, it requiring a long Time to procure a full Appearance of Peers thence; yea, a betraying of *Ireland* to the Rebels at this instant, to send for so many Protestant indifferent Peers now from thence as might serve to try him here. Moreover, it would be an infinite Expence, Charge, Trouble, besides the Danger by Sea, to summon a Jury of Peers from thence; and if they failed to appear in *England* upon Summons, as is probable they would, and lawfully might, they being not bound to it by any Law, and so no Fine certain to be set upon them for not appearing, nor legal Means of Coercion to compel them to come over upon such a Trial, there should be a Failure of Justice for want of such a Peerage: And therefore no such Trial may or can be expected, which would elude and null this Law.

5. This Statute directs the Trial of foreign Treasons in express Terms, to be before the Judges in the King's-Bench, or the Commissioners appointed by the King in any County of this Realm. Now no Trial by *English* or *Irish* Peers was ever heard of either in the King's-Bench, or before such Commissioners; but it always hath been, and ought to be, either in the House of Peers in Parliament, or before the Lord High Steward of *England*, as all former Precedents accord; and 15 E. 3. c. 2. 1 H. 4. 1. 10 E. 4. 6. b. 13 H. 8. 12. *Brook Treason*, 29, 33. *Cook's* 3 *Institute*, c. 1. & 2. p. 28, 29, 30. 4 E. 3. rot. Parl. n. 1. 50 E. 3. rot. Parl. n. 21 to 31. 34. 7 R. 2. n. 15 to 24. 10 R. 2. n. 6 to 18. 11, n. 2. n. 6, 7. 14 R. 2. n. 14. 21 R. 2. n. 12 to 17. & *Placita Corone coram Dom. Rege in Parl.* n. 1 to 20. 1 H. 4. *Plac. Corone in Parl.* n. 1 to 11. *Walsingham Hist. Ang.* p. 402. 2 H. 4. n. 30, 31. 5 H. 4. rot. Parl. n. 12, resolve. Therefore no Trial can be in this Case by Peers, either in this Court, or before Commissioners, by virtue of this Act, or any other Law.

6. This Statute is introductive of a new way of trying foreign Treasons, done out of this Realm, by a Jury within *England*; which by the Rules of the Common Law could neither inquire nor take notice of any Treasons or Matters committed, perpetrated, or acted beyond the Seas, is evident by the Prologue of this Act, the Statutes of 26 H. 8. c. 13. 5 E. 6. c. 11 M. 2 & 3. E. 1. *Coram Rege Rot.* 56. *Hereford. M.* 2 E. 2. *Fitzb. Obligation* 15. & *Utlagary* 18. Tr. 8 E. 2. *Fitzb. Testament*. 6. 6 E. 3. f. 17, 18. 27 *Aff.* 43. 41 E. 3. 19. 48 E. 3. 2, 3. 20 H. 6. 28, 44. 15 E. 4. 14, 15. 20. E. 4. *Perkins, Set.* 121. 494. 737. *Cook* 4 *Instit.* c. 17. 1 *Instit.* f. 74. *Stamford* l. 2. c. 14. *Cook* 2 Rep. 49. a. *Long & Pecock's Case*, 5 Rep. f. 107. a. 3 *Instit.* f. 48, 49. Whereupon it altering the Common Law in this Particular, it puts all former Doubts, and most punctually prescribes all the Particulars and Appurtenances belonging to the Trial of them, from which there neither may nor can be any Variation by Law.

First, it appoints the Place where they shall be tried.

1. In general, within this Realm of *England*.

2. In particular, either in the King's-Bench, wherever it sits, or in such County as the King by his Commissioners shall assign. 2. The Judges before whom the Trial shall be are thus particularly described, *The Justices of the King's-Bench, or such Commissioners as the King shall appoint under the Great Seal.*

3. The Jurymen by whom they shall be tried are thus defined in *Terminis* in the Act, *By good and lawful Men* (not Peers or Commons of *Ireland*) of the same Shire, where the said Bench of the King shall sit, if the Trial shall be in the King's-Bench; and if before Commissioners assigned by the King in any shire of the Realm, then by the good and lawful Men of the same Shire where the Commissioners sit; which is doubled (like *Pharaoh's Dream*) to make it more certain: and likewise precisely enacted by the Statutes of 26 H. 8. c. 13. & 5 & 6 E. 6. c. 11. in pursuance of this Act.

4. The Manner how the Trial shall be is thus punctually specified; In such Manner and Form, to all Intents and Purposes, as if such Treasons, &c. had been done, perpetrated, and

and committed within the same \* Shire where they shall be so inquired, heard, and determined, as is aforesaid: Which last Words (with the very like in the Statutes of 26 H. 8. c. 13. & 5 E. 6. c. 11, extending to our Case) put an end to the Point in Question; for if the Lord Magwire now at the Bar had committed the Treasons for which he is now indicted in *Westminster*, there is no Doubt nor Scruple of it, but he should have been tried by a Jury of *Middlesex*, notwithstanding his Peerage in *Ireland*; and he could neither have pleaded nor demanded his Peerage, as is resolved expressly in *Calvin's Case*, C. 7 Rep. f. 15, 16. and in the Lord *Sanchiar's Case*, Cook's 9 Rep. f. 117. who was tried and condemned by an ordinary Jury, for suborning *Carhiel* to murder *Turner* with a Pistol in *England*, though a Peer of *Scotland*, because he was here no Peer; and the forecited Books are express, that the same Law holds in case of a Peer of *Ireland*. Since then this Law expressly enacts, That the Trial of all foreign Treasons shall be by good and lawful Men of the same Shire where the King's-Bench shall sit, in such Manner and Form, to all Intents and Purposes, as if the same Treasons had been committed here in *Middlesex* where the King's-Bench sits; there neither may nor can be any other Form of Trial for the Prisoner, nor in any other Place, nor before any other Judges, nor by any other Jury, but such as this Statute hath punctually defined, and that is by a Jury of *Middlesex*, to all Intents and Purposes as if the Treasons for which the Prisoner stands indicted had been plotted and executed in *Middlesex*. Therefore to admit him to a Trial by *Irish* Peers, and not by good and lawful Men of *Middlesex*, or to send the Prisoner back to *Ireland*, there to be tried by his Peers, is to run quite counter and point-blank against this unanswerable Clause of the Statute, That he shall be tried by good and lawful Men of the same Shire where the King's-Bench sits, to all Intents and Purposes as if the Treasons had been there committed. And had they been there committed actually, as they are legally by the express Purview of this Law, it could never so much as be scrupled and made a *Quere*, Whether he should be tried by his *Irish* Peers here, or sent over to be tried in *Ireland* for Treasons acted there, after an Indictment for them here found against him? In one Word, Statutes which prescribe new Forms of Trial in such a particular way as this Act doth, are like Letters of Attorney, or Licenses of Alienation, † they must be most strictly pursued, and not varied from in the least *Punctilio*; as was resolved by all the Judges of *England*, Hill. 21 Jac. in the Case of Penal Laws, Co. 7 Rep. f. 36, 37. Therefore no other Form of Trial ought to be admitted in this Case than what the Statute prescribes, and that is only by good and lawful Men of *Middlesex*, not by *Irish* Peers.

7. The Proviso in this Act puts a Period to this Case:

*Provided always, That if any the Peers of this Realm shall happen to be indicted of any such Treasons, or other Offences aforesaid, by Authority of this Act, that then after such Indictment they shall*

*have their Trial by their Peers, in such like manner as hath been heretofore accustomed.*

From whence I shall observe these five Particulars:

1. That Treasons committed by *English* Peers in foreign Parts are triable here in *England*, within the very Body and Purview of this Law. Therefore by the self-same Reason, Law, and Justice, Treasons committed out of this Realm in *Ireland* even by *Irish* Peers, are triable in *England* by this Act, else *Irish* Peers should be quite out of this Act, and in better Condition than *English* or any *Irish* Commoners, who are clearly adjudged within it.

2. That Trial by Peers is saved by this Proviso only to the Peers of this Realm; which both in the Prologue and Body of this Act is expressly stiled *This Realm of England*. But the Peers of *Ireland* are no Peers at all of this Realm of *England*, as is resolved in 11 Ed. 3. Brief 473. 20 E. 4. 4. Co. 7 Rep. f. 15, 16. & 9 Rep. Lord *Sanchiar's Case*, f. 117. Co. 3 Inst. p. 30. & *Dyer* f. 360. b. Therefore no ways within the Compass, Words, or Reason of this Proviso, but clearly secluded out of it, and so not triable by their Peers. And this Statute prescribing a new Way of Trial for foreign Treasons, not triable here by Peers before, had excluded all *English* Peers from Trial by their Peers, by the Body of the Law, as some conceive, had it not been saved to them by this special Proviso: Therefore certainly *Irish* Peers, who are not provided for at all, and no Peers in *England*, must necessarily be excluded from their Peerage by it upon their Trial here.

3. The Reason why this Law doth save the Trial by Peers to Peers of this Realm only, and to no others (which as some conceived was not saved to them in Cases of foreign Treasons by the Statute of 26 H. 8. c. 13. as appears by the Lord *Graye's Case* hereafter cited) makes an end of the Case in Question, because Peers of the Realm of *England* are Peers in every Shire and County of *England*. Therefore by the Great Charter of *England*, and all other Acts confirming it, and the Common Law itself, they ought to be tried only by their Peers within all Counties and Places of *England*: But *Irish*, *Scotch*, and foreign Peers, are no Peers in any County of *England*, as the forecited Books resolve. Now this Statute enacting all foreign Treasons to be triable not in *Ireland*, or any other his Majesty's Dominions, but in *England* only, it was necessary and convenient by this special Proviso to save the Trial by Peers to all *English* Peers to be tried for foreign Treasons only in *England*, according to § *Magna Charta* and the *Common Law*, being their Birthright, because they are actual Peers in all Places of *England*, and may have *English* Peers enough at hand to try them without Delay upon all Occasions. But *Irish* and other Peers being no Peers at all in *England*, and it being a thing improper to try them by *English* Peers, being no real Peers to them, and a thing impossible to try them here by *Irish*, or any other foreign Peers, for the Reasons formerly alledged, and this Statute confining the Trials within it only to *England*, it had been a direct Contradiction and Ab-

\* See *Dyer* f. 31, 232, 298, 360. *Cook's* 7 Rep. f. 23. 11 Rep. f. 65.

† 21 H. 7. 7. Br. Alienation 9. 30 E. 3. 17. Br. Alienation, 23 & 30.

|| *Selden's* Tit. of Hon. p. 837, 840, 841.

§ Cap. 29. See *Cook's* 2 Inst. p. 48, 49.



furdity to provide, that these foreign Peers should be tried here by their foreign Peers for Treasons, and not by an ordinary Jury, because they are neither Peers themselves in *England*, nor others who should come hither from *Ireland*, or other foreign Parts, who lose their foreign Peerage; as soon as they set foot on *English* Ground, with relation unto *England*, where their Peerage presently ceaseth.

4. The Statute is, *That the Trial for such Treasons, &c. shall be in such Manner and Form to all Intents and Purposes as if they had been committed in England.* Now if *English* Peers commit Treason in *England*, they shall by the Statute of *Magna Charta*, cap. 29. (yea by King *John's* Charter, and by the Common Law long before, as Sir *Edward Cook* proves in his Commentary upon it, and I have at large demonstrated in my \**Plea for the Lords and House of Peers*) be tried only by their Peers, and not by any ordinary Jury, by *English* but not *Irish* Peers, as I have formerly proved. Therefore the Ground of saving Trial by Peers to Peers of *England* by this Act, is an unanswerable Argument to deny such a Trial here to any Peers of *Ireland* by *Irish* or *English* Peers.

5. The last Words of this Proviso determine the Case in Question without more Dispute: *Provided always, That if any Peers of this Realm happen to be indicted of any such Treasons aforesaid by Authority of this Act, they shall have such Trial by their Peers, in such like manner as hath been heretofore accustomed.* It being always the Custom of *England*, † since *Magna Charta*, and long before, in Cases of Treasons at the King's Suit, to try all *English* Peers in *England* only by their Peers, and such a Privilege as † Sir *Edward Cook* holds, *they cannot waive if they would, as it was adjudged in the Lord Dacre's Case*, Pas. 28 H. 8. and since in the *Earl of Castlehaven's Case*, 7 Car. But on the other side it is most certain, that it hath never been accustomed heretofore, that *Irish* or any other foreign Peers should be tried for any Treasons here committed by *English*, *Irish*, or any other foreign Country Peers within the Realm of *England*; nay, no one Precedent of this kind was ever heard of; and it is an impossible thing in Point of Law, as I have proved: Therefore no such Trial by any Peers can be once thought of or imagined for the Prisoner or any other Peer of *Ireland*, within the Purview or Proviso of this Act.

6. I shall add further, *ex abundanti*, to put this Case out of all Question, That I have made some cursory Search into most of the *Irish* Annals, Histories, Antiquities, Statutes, upon this Occasion (and I should have made a further Inquisition had I enjoyed any vacant Hours to do it) yet I cannot find so much as one Precedent of any *Irish* Peer tried in *Ireland* for Treason, or any other Offence, by his Peers, before this Statute of 35 H. 8. and I believe the Prisoner's Council cannot (as indeed they neither did nor could) produce one Example of such a Trial there, by Peers, before this Law, nor any Act of Parliament in that Realm before this Statute concerning Treasons, which provides, *That Irish Peers shall be tried by their Peers*, there being no such

Claufe, or least Hint thereof, to be found in the Statutes of 18 H. 6. c. 2, 3. 10 H. 7. c. 13. 13 H. 8. c. 1. 28 H. 8. c. 1, 2, 7. which make sundry Offences Treasons, and extend to and mention *Irish Lords and Rebels* by Name, as well as Commons; all and every of these Acts leaving both the *Irish* Peers and Commoners to the self-same Trial by a Jury. And since this Act I presume they cannot produce above one Precedent (and that a very late one in case of Treason) where an *Irish* Peer was tried by his Peers, and it was the Case of the *L. Slane*, much about 20 Years since there tried and acquitted by his Peers in *Ireland*, as I am informed; before which time it was then confessed by the Judges there, they never heard or read of any one such Trial used in *Ireland*; and since it we have heard of no other Trial there by Peers, to second it, but only of one Noble Lord (the Lord of *Valentia*, Viscount *Norris*) there extrajudicially condemned by mere Martial Law in a Council of War, even in Times of Peace, by the Earl of *Strafford*, Ann. Dom. 1635. but not executed, nor tried by his Peers in a legal way; all their Peers formerly being there either attainted by Act of Parliament, as is evident by the *Irish* Statutes of 28 H. 8. c. 1. 3 & 4 Ph. & Ma. c. 2. 11 El. c. 1. 13 Eliz. c. 6, 7. 27 Eliz. c. 1. 28 Eliz. c. 8, 9. 11 Jac. c. 4. 2 H. 6. rot. Parl. n. 8. or executed by Martial Law, as soon as apprehended in the Wars, or else slain in actual Rebellion, or pardoned upon their Submissions, without any Trial for their Treasons by their Peers.

For Attainders of *Irish* Peers, and other Traitors and Rebels by Act of Parliament in *Ireland*, I find the Earl of *Kildare*, with others, attainted for a Treason and Rebellion (much like this for which the Prisoner stands here indicted) in a Parliament held at *Dublin* in *Ireland*, 28 H. 8. c. 1. Since this, in 11 Eliz. c. 1. *Shan O Neale*, a bloody desperate Rebel, was attainted by Parliament after his Death, (being hewn in pieces by the Scots) and the Name of *O Neale* extinguished, it being made High Treason for any to assume that Name; and I find a *Mac-Mabon* and *Magwire* forfeiting Land among other Rebels in that Act; which largely sets forth the Queen's Title to *Ireland*. 27 Eliz. c. 1. *James Eustace*, Viscount of *Baltinglas*, was attainted of High Treason for a publick Rebellion against the Queen. 28 Eliz. c. 9. I find *John Brown*, and near one hundred more *Irishmen*, by Name attainted of High Treason by this Act for an open Rebellion. In 11 & 12 Jac. c. 4. I find *Hugh Earl of Tyrone*, *Jury Earl of Tirconell*, *Caconaugh Magwire*, *Mac-Mabon*, and above 20 more chief *Irish* Gentlemen, attainted of High Treason by this Act, for their open rebellions. But for a Trial of any *Irish* Peer for any Treason in *Ireland* by his Peers, I can meet with no Precedent as yet, but that of the Lord *Slane* only, and shall be glad to be informed of any other to parallel it.

Indeed in the printed Statute of 2 Eliz. c. 1. made in *Ireland*, for restoring to the Crown the ancient Jurisdiction over the State Ecclesiastical and Spiritual, and abolishing all Power repugnant to the same, and in the Statute of 2 Eliz. in *Ireland*, cap. 6. intituled, *An Act whereby certain*

\* Page 202 to 307.

† See my *Plea for the Lords and House of Peers*, 202, 203 to 309. where this is largely proved; & p. 424.

‡ 3 Instit. f. 30.

Offences are made High Treason, I met with these two Clauses concerning the Trial of Irish Peers for Treasons only within these Acts. "And if it shall fortune that any Peer of this Realm shall happen to be indicted of and for any Offence that is made Premunire or Treason by this Act; that then the same Peer or Peers so being indicted, shall be put to answer for every such Indictment before such Peers of this Realm, of English Blood (not Irish, mark it) as by the Lord Deputy, Governor or Governors of this Realm, shall be by Commission appointed under the Broad Seal, and to have his and their Trial by his and their Peers; and to receive and have such like Judgment upon the same Trial of his or their Peers, or making open Confession of the same Offence or Offences, as in other Cases of Treason or Premunire hath been used, or is used in other Cases of High Treason and Misprision of Treason; which latter Clauses, As in other Cases of Premunire and High Treason hath been used, and, As is used in other Cases of High Treason, or Misprision of Treason, relate only unto those Words, To receive and have like Judgment upon Trial; and so only to the Judgment and Sentence given in these new Treasons and Offences enacted by these Acts, not to the manner of Trial by Peers;" which is merely a new kind of Trial never mentioned in any other Irish Acts before these, and restrained only to the new Treasons and Premunires specified in these Acts, in Imitation of the \* English Statutes made in the self-same Cases, which provide a Trial by Peers for our English Peers; which was never heard of in any other Acts of Parliament in Ireland till these, and never practised that I read of in that Realm, either before or since. To clear this up more fully, the Statute of 11 E. 3. c. 4. makes mention of Prelates, Earls, and Barons in Ireland, as well as in England: And the Statute of 4 H. 5. c. 6. prohibits, That any one of the Irish Nation should be chosen to be an Archbishop, Abbot, or Prior, within Ireland, because many of them (against a former Act there made) had been made Archbishops, Bishops, Abbots, Priors, whereby they became Peers of the Parliament in the same Land, and brought with them Irish Servants to the Parliaments, and Counsels there holden, whereby the Privities of the Englishmen within the same Land have been and be daily discovered within it to the Irish People Rebels to the King, to the great Peril and Mischief of the King's lawful liege People in the same Land. And the Statute of 10 H. 7. in Ireland, c. 16. enacts, That the Spiritual and Temporal Lords of the Land of Ireland shall appear in every Parliament holden in that Land in their Parliament Robes, in like Manner and Form as the Lords of the Realm of England appear in the Parliaments holden within the said Realm, under pain of forfeiting 100s. to the King: Which Use of Robes they had there for Penury omitted by the Space of 20 or 24 Years. But there is no Mention of any Trial by their Peers in these or any other English or Irish Statutes, but those forecited of 2 Eliz. c. 1 & 6. Yea the Statute of 25 H. 6. in Ireland, c. 28. enacts, For that there is a Law established, That every

Lord that is called a Lord of the Parliament, in all Pleas personal as well as real, in which Amerciaments do lie, shall be amerced 100s. to the great Impoverishment of the said Lords, forasmuch as their Livings are diminished and wasted by War; That no Lord of Parliament shall be amerced from thenceforward in the said Pleas, otherwise than other Persons, notwithstanding any Law made before to the contrary. The Amerciaments therefore of Irish Lords and Commons being alike by this Law, it is very probable their Trials by Jury were both alike, and that they were not tried by their Peers.

Now the Prisoner's Council have pleaded in his Plea, That Magna Charta gives the Trial by Peers in Ireland, and no other Law but it; and that it was not accepted, received, confirmed, and used as a Law in Ireland till the Statute of 10 H. 7. and the Words thereof (if it be confirmed by that Act) are most clear in it, That all Statutes late made, &c. from henceforth, be deemed, accepted, used, and executed within this Realm of Ireland in all Points; and if it were made a Law there by the Statute 8 E. 4. c. 1. (which I rather believe) the Words of that Act are, That from henceforth all other Statutes and Acts made by Authority of Parliament in England, be ratified, confirmed, and adjudged by Authority of this Parliament in their Force and Strength, from the sixth Day of March. So as Magna Charta was not a general Law in Force, Use, Acceptance, or Execution in Ireland, at least amongst the Irish, till 8 E. 4. or 10 H. 7. as is evident by these Acts. Because I would leave nothing concealed or unanswered that might make for the Prisoner's Advantage, I must acknowledge that King Henry III. in the first Year of his Reign sent a Roll of the Liberties which his Father King John and he had granted to this Realm of England unto Ireland, out of his special Grace, by unanimous Consent of all his Lieges, and confirmed the same to all his Spiritual and Temporal Lords and faithful Subjects there (for their Fidelity to him and his Father) to them and their Heirs for ever, as a signal Badge of his Favour, by this Patent: † Rex, Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus, Militibus, et libere tenentibus et omnibus fidelibus suis per Hiberniam constitutis, Salutem. Fidelitatem vestram in Domino commendantes, quam Domino patri nostro semper exhibuistis, et nobis estis diebus nostris exhibiti; volumus, quod in signo fidelitatis vestre tam præclaræ, tam insigniter Libertatibus Regno nostro Angliæ a Patre nostro et nobis concessis, de gratia nostra et dono in Regno nostro Hiberniæ gaudiatis, vos et vestri imperpetuum: Quas distinet in Rotulum redactas, de communi consilio omnium fidelium nostrorum vobis mittimus, signatas sigillo Domini Gualonis Apostolicæ sedis Legati, et fidelissimi nostri Willielmi Marescalli & Rectoris nostri et Regni nostri, quia sigillum nondum habuimus; easdem processu temporis majorum consilio proprio sigillo firmandas. Teste apud Gloverniam, 3 die Februarii; he being \*\* crowned but on the 28th of October before at Gloucester, where this Patent bears Date.

\* 1 El. c. 1. 6.

† Pat. 1 H. 3. m. 3.

§ King Henry being then a Minor, and under his Regiment.

\*\* Mat. Paris Hist. Angl. p. 278.



After which King Henry having ratified the Great Charter of Liberties in England, in the ninth Year of his Reign (printed in all our Statute Books, and in Cook's 2 Institute) in the 12th Year he commanded it, or rather that of Pat. 6. Johan. Reg. m. 6. to be published openly in Ireland by his Writ; \* "Rex, dilecto et fideli suo R. Burgo. Justic. suo Hibernie, salutem. "Mandamus vobis firmiter precipientes, quatenus certo die et loco faciatis venire coram vobis Archiepiscopos, Episcopos, Abbates, Priores, Comites et Barones, Milites, et libere tenentes, et Ballivos singulorum Comitatum, et coram eis publice legi faciatis **Cartam Dom. Regis Johannis** patris nostri cui sigillum suum appensum est, quam fieri fecit jurari a Magnatibus Hibernie, de legibus et consuetudinibus Anglie observandis in Hibernia. Et precipiatis eis ex parte nostra, quod leges illas et consuetudines in Carta predicta contentas de cetero firmiter teneant et observent. Hoc idem per singulos Comitatus Hibernie clamari faciatis et teneri Prohibentes firmiter ex parte nostra, et super forisfacturam nostram ne quis contra hoc mandatum nostrum, venire presumat, eo excepto quod non de morte nec de catallis Hibernensium occasione nichil statuatur ex parte nostra citra quindecim dies a die St. Michielis, anno r. n. 12. super quo respectum dedimus Magnatibus nostris Hibernie, usque ad terminum predictum. Teste meipso apud Westm. 8 die Maii, anno 12.

In Cook's 3 Instit. f. 141. b. 4 Instit. p. 329. b. et in 18 H. 3. Rot. Par. m. 17. n. 21. there is mention made of *Consuetudines et Leges Regni nostri Anglie, quas bone memorie Dominus Johannes Rex pater noster de communi omnium de Hibernis consensu teneri statuit in terra illa.* Teste Rege apud Winch. 28 die Octob.

In the thirtieth Year of Henry III. all Laws and Customs of England were established in Ireland by this Patent: *Quia pro communi utilitate terre Hibernie, et pro unitate terrarum, Rex vult, et de communi consilio Regni probatum est, quod omnes Leges et Consuetudines que in Regno Anglie tenentur in Hibernia teneantur, et eadem terra eisdem legibus subiacet, et per easdem regatur, sicut Johan. Rex cum ultimo esset in Hibernia, statuit et firmiter mandavit: Ideo volumus, quod omnia Brevia de communi jure que currunt in Anglia, similiter currant in Hibernia sub novo sigillo nostro, &c. Teste meipso apud Woodstock, 19 die Septemb.*

The Patent of King John, which this Patent mentions, is that of Rot. Pat. 6 Johan. Regis, m. 6. n. 17. never yet printed. Rex, &c. Justiciariis, Baronibus, Militibus, et omnibus fidelibus suis, &c. sciatis quod dedimus potestatem Justiciariis nostris Hibernie, quod Brevia sua currant per terram nostram et potestatem Hibernie, scilicet Breve de Recto, de feodo dimidie Militis, et infra; et erit terminus de morte aut post transfretationem Henrici patris nostri de Hibernia in Angliam. Et Breve de nova disseisina, et erit terminus post primam Coronationem nostram apud Cant. Et Breve de Fugitivis et Nativis, et ejus erit terminus post captionem Dublin. Et Breve de divisis faciendis inter duas villas, exceptis Baronibus: Et

ideo vobis mandamus et firmiter precipimus, quod hæc ita fieri et firmiter teneri per totam potestatem nostram Hibernie faciatis. Teste meipso apud Westm. 2 Novemb.

In the 41st Year of his Reign, Clause 41 H. 3. m. 11. dorf. I find this memorable Writ, touching the Confirmation and Customs of England settled in Ireland, by Assent of the Prelates and great Men thereof: Rex, Thesaurario et Baronibus de Scaccario Dublin, salutem. Quia de assensu et voluntate Prælatorum et Magnatum terre Hibernie dudum fuit provisum et concessum, quod eisdem legibus uterentur in terra illa quibus homines regni nostri utuntur in regno illo; et quod eadem Brevia quoad terras et tenementa recuperanda currebant in terra illa, quæ currunt in regno prædicto, sicut nostis: Et dicta provisio et concessio omnibus retroactis temporibus fuerint obtenta et approbata; miramur quamplurimum, quod sicut ex insinuatione venerabilis patris Thome Lismor. Episcopi accepimus, emanare permisisse ex Cancellaria Edwardi filii nostri in Hibernia, contra consuetudinem obtentam et formam Brevium in regno nostro usitatam, Breve subscriptum contra præfatum Episcopum in hæc verba: *E. illustris Regis Anglie primogenitus Vic. Waterford, salutem. Precipe Thome Lismor. Episcopo, quod juste et sine dilatione reddat Waltero Episcopo Waterfordi Maneria de Archmordeglan, Kilmordri et Motba cum pertinentiis, quæ clamat esse jus Ecclesie suæ, et in quæ idem Episcopus non habet ingressum nisi per Alanum quondam Lismor. Episcopum cui Griffinus quondam Lismor. Episcopus illa demisit, qui in illa se intrusit post mortem Roberti quondam Lismor. Episcopi, qui inde injuste et sine judicio disseisuit Robertum quondam Waterford. Episcopum, prædecessorem Episcopi post ultimum reditum, &c. Quia vero dictum Breve tam dissonum est, et contra leges et consuetudines in regno nostro obtentas, et formas Brevium nostrorum ibidem approbatas, præsertim cum Breve ingressus non transeat tertiam personam, nec ratione intrusionis in terram aliquam post mortem alicujus competat actio alicui de terra illa, nisi illi cui per mortem illam jus debetur in eadem: Nec enim dicitur intrusor, qui jure hæreditario, vel ratione Ecclesie suæ, succedit prædecessori suo in hiis de quibus idem prædecessor fuit seiscitus in Dominico suo ut de feodo die quo obiit: Vobis mandamus, quod si dictum Breve a Cancellaria prædicta in forma prædicta emanaverit, executionem ejusdem Brevis supersedeatis; revocantes sine dilatione quicquid per idem Breve actum fuerit in Curia præfati filii nostri. Teste apud Wynd. 27 die Januarii. Eodem modo scribitur Alano le Suche Justic. Hibernie, et Waleranno de Wellest, et sociis suis Justiciariis itinerantibus; ut supra.*

In the fifth Year of King Edward III. rot. Pat. 5 E. 3. parte 1. memb. 25. it was enacted in a Parliament that Year in England, among other things, *Quod una et eadem Lex fiat tam Hibernicis quam Anglicis, excepta servitute Vicagiorum penes Dominos suos, &c.* by a Parliament then holden in Ireland.

\* Clause 12 H. 3. part 1. m. 8.

† Rot. Par. 30 H. 3. m. 3. Sir John Davi's Irish Rep. p. 37. Cook's 4 Instit. p. 350. 1 Instit. f. 141. b. Mr. St. John's Argument at Sirafford's Attainder, in Russell's Coll. Vol. 8. p. 695.

Yet notwithstanding all these Patents, Charters, Acts, the Benefit of the Great Charter, and of the Liberties, Laws, and Customs of England, extended not to all Ireland, and the Irish therein dwelling; but only to such Parts of Ireland as were reduced and divided into Counties, and possessed by the English Colonies, and to the Englishmen inhabiting in Ireland, and such Irish within the English Pale as lived in due Subjection and Obedience to the Kings of England, or were specially endenized by their Patents to them, not to the Irish Countries and Colonies which were not reduced into Counties, and under the Obedience of the Kings of England (amounting to more than two third parts of Ireland in Extent of Ground) who had no Benefit of the Laws or Liberties of England, but by special Grants and Charters of Indenization from the Kings of England, which some Septs of the Irish and others purchased from our Kings, as Sir John Davis proves at large in his Irish Reports, in the Case of Tanistry, fol. 37, 38, 39. and the Records there cited: To which I shall add these following Records not mentioned by him, fully evidencing this Truth. Claus. 37. H. 3. m. 15. Dors. Rex Justic. Hibernie salutem. Monstravit nobis Mamorth Offerthierim, et Rothericus frater ejus, quod Antecessores sui et ipse, licet Hibernientes fuissent, semper tamen firmiter fuerunt ad fidem et servitium nostrum et predecessorum nostrorum Regum Angliæ, ad Conquestum una cum Anglicis faciendum super Hibernientes. Et ideo vobis mandamus, quod si ita est, tunc non permittas ipsos Mamorth et Rodericum repelli, quin possint terras vendicare in quibus jus habent, sicut quilibet Anglicus. Quia si ipsi et Antecessores sui sic se habuerunt cum Anglicis, quamvis Hibernientes, injustum est, licet Hibernientes sint, quod exceptione qua repelluntur Ibernenses a vendicatione terrarum et aliis repellantur. Teste, &c.

By this Record it is apparent, that all Irishmen but those whose Ancestors joyned with our Kings in the Conquest of Ireland, and were loyal Subjects to our Kings, had no Benefit of the King's Writs and Laws to claim or recover Lands in Ireland, in 37 H. 3.

Hereupon divers native Irishmen purchased several Patents from our Kings, granted out of special Grace to enable themselves and their Posterity to enjoy the Benefit of the English Laws in Ireland, for which I shall cite these few ensuing Precedents, instead of many of like nature. Pat. 17. Johan. Reg. memb. 15. together with Pat. 12. E. 1. m. 11. Pro diversis in Hibernia, quod uti possint Legibus Angliæ in Hibernia. Rex omnibus Ballivis et fidelibus suis Hiberniæ ad quos, &c. salutem. Volentes Giraldo fil. Johannis Hibernico, gratiam facere specialem, concedimus pro nobis et Heredibus nostris, quod idem Geraldus et liberi sui quos legitime procreavit, hanc habeant libertatem, quod ipsi de cætero in Hibernia utantur legibus Anglicanis; et firmiter inhibemus, ne quis eos contra hanc concessionem nostram vexet in aliquo, vel perturbet. In cujus, &c. T. Rege apud Carnarvan, 30 die Maij. Consimiles literæ habet Margeria de Lessan, Henricus de Lessan, Petrus de Lessan, Andreas de Lessan, Benedictus filius Johannis, Ardmagh, Willielmus Heuke, Hibernici. In cujus, &c. Teste ut supra.

Pat. 18. E. 1. m. 24. Rex omnibus Ballivis et fidelibus suis in Hibernia, ad quos, &c. salutem.

Volentes Isamaia filia Oragilig, et Matilda filia Oragilig, Hibernicis, gratiam facere specialem, concedimus pro nobis et heredibus nostris, quod eadem Isamaia et Matilda ad totam vitam suam hanc habeant libertatem, videlicet, quod ipsæ de cætero in Hibernia utantur legibus Anglicanis: Et firmiter inhibemus, ne quis eas contra hanc concessionem nostram vexet in aliquo vel perturbet: In cujus, &c. T. Rege apud Westm. 12 die Junij, per ipsum Regem.

Pat. 19. E. 1. m. 20. Rex omnibus ad quos, &c. salutem. Sciatis quod de gratia nostra speciali, concessimus Willielmo filio Carmok. Clerico, quod ipse et omnes posteri sui imperpetuum Lege et Confectudine Anglicana utantur in terra nostra Hibernie, ita quod ipsi per alias leges et consuetudines, per nos et ministros nostros quoscunque de cætero non deducantur contra voluntatem suam, sed quod ipsi in vita sua et morte de cætero libertate gaudeant Anglicana. In cujus, &c. Teste Rege apud Atherurg. 22 die Jan.

The like Patent is granted Mauricio de Bre. Hibernico, Pat. 24. E. 1. m. 3. These Records, with Claus. 2. E. 3. m. 17. Rex dilecto et fideli suo Johanni Darcy, de Nevien, Justiciario suo Hiberniæ, salutem. Ex parte quorundam hominum de Hibernia extitit supplicatum, ut per statutum inde faciendum concedere velimus, quod omnes Hibernici qui voluerint legibus utantur Anglicanis ita quod necesse non habeant super has chatias aliquas a nobis impetrare. Nos igitur certiorari volentes, si sine alieno præjudicio præmissis annuere valeamus, vobis mandamus, quod voluntatem magnatum terre illius in proximo Parlamento subdem tenendo. super hoc cum diligentia perscrutari faciatis, et de eo quod inveneritis, una cum vestra consilio et advisamento nos distinte et aperte cum celeritate qua potestis, certificetis, hoc breve nostrum nobis remittentes: Which, compared with Claus. 5. E. 3. part 1. m. 25. Pro hominibus terre Hiberniæ de Lege Angliæ utenda in custodiis recuperandis, &c. are an unanswerable Evidence beyond Contradiction, that the Great Charter, Liberties, Customs, and Laws of England, granted to those of Ireland by King John, Henry III. Edward I. and III. extended only to the English Subjects inhabiting Ireland, and to such Irish who lived in English Counties in due Subjection to the Kings of England, or were by special Charters of Indenization enabled to enjoy the Benefit of them; who were but few in consideration of the rest of the Irish Nobility, Gentry, and Commons, retaining their ancient Brebon Laws, and would not submit to the Laws of England, nor Government of our Kings, against whom they frequently rebelled, being reputed rather Enemies than Rebels, and usually so stiled in the Statutes of Ireland, till the Statutes of 33 H. 8. c. 9. as appears by the Statutes of 18 H. 6. c. 3. 25 H. 6. c. 4, 5. 28 H. 6. c. 1. 3 E. 4. c. 2. 5 E. 4. c. 6. 18 E. 4. c. 2. 10 H. 7. c. 9, 10, 17, 19. 28 H. 8. c. 11. and by Sir John Davis's Irish Reports, in the Case of Tanistry, fol. 39. the Common Laws and Statutes of England being not universally received or established throughout the whole Realm of Ireland, till after the Statutes of 3 and 4 Phil. et Mar. c. 3. 11 Eliz. c. 9. and King James his Proclamation in the third Year of his Reign; or at leastwise till the Statutes of 8 E. 4. c. 1. or 10 H. 7. c. 22. which established all the Statutes



made in *England*, concerning or belonging to the Good of the same, only as to the *English*ry, or *English* Pale and Counties, not to the *Irish*ry, as the Statutes of 17 H. 7. c. 8, 9, 10, 11, 13, 17, 19. 35 H. 6. c. 3. 5 Ed. 4. c. 3, 4, 5. 13 H. 8. c. 3. 28 H. 8. c. 15. made in *Ireland*, with other Acts resolve, which the Lord *Magwire* confesseth in his Plea, and his Council cannot deny. Now the Lord *Magwire* being none of the *English* Pale, of *Irish* Septs, Liege Subjects to our Kings, but of the *Irish*ry, and profess'd Enemies to our Kings, as the *Irish* Annals and Statutes inform us; the Statute of *Magna Charta*, and the Laws, Liberties, and Customs of *England*, granted to the *English* and loyal *Irish* Subjects in *Ireland*; and so this Trial by Peers could not extend to his Ancestors till after the Statutes of 8 E. 4. or 10 H. 7. and of 35 H. 8. c. 1. yea, after the Statutes of 3 and 4 Ph. and Ma. c. 3. and 11 Eliz. c. 9. for reducing the *Irish*ry into Counties, and under the Laws and Statutes of *England*, to which they were not formerly subject. And from these Patents of King *John* and *Henry* the Third fore-cited, and the Statutes of 8 E. 4. and 10 H. 7. 'till 35 H. 8. cap. 1. no one Precedent of any one *Irish* Peer's Trial by his Peers in *Ireland*, in any Case whatsoever, can be produced; therefore certainly there was no such Trial known or in use in *Ireland*, before 35 H. 8. nor any Precedent of it since, till one of late; and *una Hirundo non facit Ver.*

If then the Peers of *Ireland*, before the making of this Act of 35 H. 8. were never actually tried by their Peers, for any Treason done in *Ireland*, for ought can be proved, and there be no express Act for any Trial by Peers there, for any Treason, but only the Act of 2 El. c. 1 and 6. and that only for special Treasons within those Laws, which are none of those for which the Prisoner stands here indicted; I may safely conclude, That this Law of 35 H. 8. never intended to preserve to *Irish* Peers a Trial by their Peers in *Ireland*, which kind of Trial was never before had, used, or practised in that Realm; and therefore the Prisoner shall be tried by an ordinary Jury at this Bar, not by his *Irish* Peers; because, if he were in *Ireland*, (for ought appears yet to me) he should not be tried by his Peers there: And in both these Points, the Book in *Dyer*, (the only Authority which seems to be strongest against,) is for me, the Words whereof are these in *English*; *The grand Chancellor of Ireland moved this Question to the Queen's Council, If an Earl or Lord of Ireland, who commits Treason in Ireland, by Rebellion, shall be arraign'd and put to his Trial in England for this Offence, by the Statutes of 26 H. 8. c. 13. 32 H. 8. c. 4. 35 H. 8. 2 or 3 E. 6. And it was held by Wrey, Dyer, and Gerrard, Attorney General, That he could not: Mark now their Reasons, for he cannot have his Trial here by his Peers, (which is a full Resolution in point of my third Question, agreeing with what I have endeavour'd with Arguments to prove, and is an unquestionable Truth, which I submit to.) Then it follows, Nor can he be tried here by any Jury of Twelve; mark the Reason, not because he is a Peer of *Ireland*, and therefore ought to be tried*

by his Peers, and not by a Jury, for that had been full against me, and it is now the only Knot in Question, but because he is not a Subject of *England*, but of *Ireland*, and therefore he shall be tried there; which Reason (extending as well to an *Irish* Commoner as Peer) hath been since adjudged directly false, absurd, and against the Law, both in *Orouk's* Case, and in *Sir John Perrot's* Case, and since in *Mac-Mabon's* Case. And *Sir Edward Cook* informs us, in his Institutes on *Lit. f.* 261. that *Wrey* himself, in *Orouk's* Case (where this Opinion of his was vouch'd) did openly disclaim, that ever he deliver'd any such Opinion as this; but ever held the contrary to it; and so it is a Misreport in this particular: After which, the Book concludes thus; *And it is said, that the Usage (to wit, in Ireland) to attain a Peer, is by Parliament, and not by Peers.* which comes full in terminis to what I have last insisted on, and, I am certain, cannot be disproved. Wherefore this Authority in *Dyer*, as to all that is Truth and Law in it, is wholly for me, in the Reason of the Law, and against me only in what hath been since adjudged to be no Law. I shall close up all with a stronger Case and Authority than this in Question, which will over-rule this Case, and that was in *\*Trinity Term*, An. 33 H. 8. in the *King's-Bench*. *Edward Lord Gray*, immediately before having been Lord Deputy of *Ireland*, was indicted, arraign'd, and attainted of High Treason, by an ordinary Jury in the *King's-Bench*, in *England*, for letting divers Rebels out of the Castle of *Dublin*, and discharging *Irish* Hostages and Pledges, that had been given for the securing the Peace of *Ireland*; and for not punishing one who said, the King was an Heretick, whilst he was Lord Deputy in *Ireland*: For these Treasons (all acted and committed in *Ireland*) though an *English* Peer, he was tried by an ordinary Jury in *England*, by the Statute of 26 H. 8. c. 13. ratify'd in *Ireland* by 28 H. 8. c. 7. fore-cited; which secluded him from his Trial by Peers; being not saved by these Acts: Therefore *a Fortiori* shall these Statutes, and this of 35 H. 8. c. 2. and 5 E. 6. cap. 1. made since his Judgment, exclude this *Irish* Lord, being no *English* Peer, from any Trial by his Peers.

Finally, The Prologue of this Statute, coupled with the Body thereof, puts a Period to this Question, beyond all Doubt or Dispute. *Forasmuch as some Doubts and Questions have been moved, that certain Kinds of Treasons, &c. committed out of the King's Majesty's Realm of England, cannot, nor may, by the common Laws of this Realm, be enquired of, heard, and determin'd within this his said Realm of England; for a plain Remedy, Order, and Declaration, therein to be had and made, be it enacted, &c. That all manner of Treasons, &c. committed by any Person or Persons out of this Realm of England, shall be, from henceforth, enquired of, heard, and determined by the King's Justices of his Bench, &c. by good and lawful Men of the same Shire, where the said Bench shall sit and be kept, in like Manner and Form, to all Intents and Purposes, as if such Treasons had been done within the same Shire, where they shall be so enquired of,*

\* Mr. St. John's Argument at *Strafford's Attainder*, in *Rushworth*, Vol. 8. p. 689 & 695.

heard, and determined. The sole Scope, End, and Purpose then of the King and Parliament in this Act, being to take away all Doubts and Questions formerly moved in point of Law, touching the Trial of Treasons done out of the Realm, before the King's Justices of his Bench, and Commissioners in *England*, by a Jury, and to make and enact a plain Remedy and Declaration therein for the future, in Manner aforesaid, I humbly apprehend, there can be no Doubt nor Question now moved, whether this Prisoner ought to be tried by his Peers in *Ireland* or *England*, for this his most horrid Treason committed out of the Realm of *England*; since this Statute so clearly declares and resolves the contrary, in most plain and positive Words. The rather, because the King's Patent, creating him Baron of *Inskel-lin*, under the Great Seal of *Ireland*, maketh him only a Peer in *Ireland*, and gives him only a Place and Voice among the Peers and Nobles of *Ireland*, in the Parliaments of *Ireland*, not in *England*, as he sets forth in his own Plea, \* in precise Terms; as the Patent made by King *Edward* the Fourth, to *Robert Bold*, created him Baron of *Ratbauth* in *Ireland*, and constituted him, *Unum Dominum & Baronem omnium & singulorum Parliamentorum & magnorum Conciliorum nostrorum in terra nostra Hiberniæ tenendorum: Habendum, tenendum una cum feodo, titulo, nomine, honore, loco et sessione inde sibi et heredibus suis masculis imperpetuum.* And as King *Henry VIII.* † made *Thomas Viscount Rochford*, by the self-same Patent, both Earl of *Wiltshire*, *infra regnum nostrum Angliæ*, and Earl of *Ormond*, *in terra et dominio nostro Hiberniæ* only, with several Clauses of Investitures; several *Habendums*, and several Creation-monies for each Title and Kingdom: And as the Patents of all other *Irish* Earls, Viscounts, Lords, and Barons in *Ireland*, create and make them Peers only in *Ireland*, not in *England*, as learned *Mr. Selden* informs us, § and their very Patents resolve in *terminis*; and therefore quite exclude the Prisoner, and all other Peers of *Ireland*, from any Trial by their Peers in *England*, either by the Proviso or Body of this Statute, or their Patents, which are point-blank against it.

And now, I hope, I have fully made good the Point in Question, with all the several Branches of it, That this Act extends to Treason committed in *Ireland*; yea, to *Irish* Peers, as well as to *Irish* Commoners; and that there can be no Trial at all upon it here of an *Irish* Peer by *Irish* Peers, nor in any Place else within *England*, and that only (as the Prisoner's Case is) by a *Middlesex* Jury. And so I have finish'd my assertive Part.

The first and grand Objection is that which I meet with in the beginning of this Prisoner's Plea, the Statute of *Magna Charta*, c. 29. **That no Freeman shall be taken or imprisoned, or disseised of his Freehold, &c.** nor will we pass upon, or condemn him, but by the lawful Judgment of his Peers, or by the Law of the Land; which Law and Statute is, among others, establish'd for a Law in the Kingdom of *Ireland*, there to be put in use at all Times when Need is, by the Statute made in the Parliament held at *Droghedab* in *Ireland*, in the Tenth Year of King *H. 7.* c. 22. and by vertue of these two Laws he

ought to be tried by his Peers in, or of *Ireland*, in this Suit against him by and for the King.

To which I shall give these satisfactory Answers.

1. That the Statute of *Magna Charta*, in its original Creation and Confirmation, was made and granted to the *Archbishops, Bishops, Abbots, Priors, Earls, Barons, Towns, and to all the Freemen of this our Realm of England, and to them only, to be kept in our Kingdom of England for ever.* whence it is intituled, *The Great Charter of the Liberties of England*, as the Prologue of it resolves. The first Chapter thereof is peculiar to the Church of *England*, viz. **That the Church of England shall be free, and enjoy all her Rights and Liberties inviolable.** We have also granted to our Freemen of our Realm of *England* these Liberties under-written, to have and to hold to them and their Heirs, of us and our Heirs for ever. So cap. 12. *The City of London shall have all her old Liberties and Customs, and all other Cities, Boroughs, Towns, and the Barons of the Cinque-ports, and all other Ports, shall have all their Liberties, and their Customs.* Cap. 35. *One Measure of Wine, &c. shall be throughout our Realm.* Cap. 32. *All Merchants (if they were not openly prohibited before) shall have safe and sure Conduits to depart out of England, to come into England, and to tarry in England, as well by Land as by Water, &c.* In Cap. 23. *All Weers shall be utterly put down between Thames and Medway, and throughout all England: And the Conclusion, cap. 37. concerns the Realm of England, and Englishmen only.* Neither doth the Charter of King *John*, nor that of the 11 of *H. 3.* nor 18 *H. 3. m. 17. nu. 21.* nor of 30 *H. 3.* nor yet of 13 *E. 1.* cited in *Cook's 4 Instit. p. 349.* and 350. and in his *Instit. on Littleton, f. 141.* establish *Mag. Char.* at least in relation to all the native *Irish*, but *English* alone, it being made particularly for the Realm of *England*, and *Englishmen*; and therefore the Prisoner pleads, it was settled there only as a Law to be received and put in use (in respect of the *Irish* then living only in the *English* Pale, and the King's loyal Subjects, not of any *Irish* Enemies in Hostility) by the Statute of 10 *H. 7. c. 22.* but not before: And so is *Sir Edward Cook's* Opinion, in express Terms, in his 4 *Institut. pag. 351.*

By which it is most clear, that from King *Henry* the Second's Days, (who first subdued *Ireland*, *An. 1171.*) there were no Trials in *Ireland*, of any *English* or *Irish* Peers, Subjects to our Kings, for Treason by their *Irish* Peers, by vertue of *Magna Charta*, 'till after the Statute of 10 *H. 7.* which was made but forty six Years before the Statute of 35 *H. 8.* between which, and this later Law, we read not of one Trial of any *Irish* Peer for Treason there by his Peers, nor yet since, that I can find, (but only one of late by 2 *El. c. 1, 6.*) 'till this very Day; by which it is most apparent, that this Trial by Peers in *Ireland*, (a Privilege now insisted on) was never actually claim'd or enjoy'd by any Peer of *Ireland*, especially by those in antient Enmity and Rebellion against our Kings, stiled Enemies in the *Irish* Statutes, and *English* Records, before the Statute of 35 *H. 8.* and so it can be no Prejudice, nor Injustice at all, nor Breach of *Magna Charta*, to out the Prisoner of it.

\* *Rot. pat. 8 E. 4. in Cancell. Hiberniæ; Mr. Selden's Titles of Honour, Book 2. c. 6. p. 840, 841.*

† *Pat. 21 H. 8. pars 2. 8 Decemb.*

§ *Titles of Honour, Book 2. c. 6, 7.*



2. It may be question'd upon very good Reasons, Whether the Statute of 10 H. 7. c. 22. doth confirm this Statute of *Magna Charta* in Ireland, or not? at least as to *Irish* Peers, especially those of the old *Irish* Blood, (to whom it relates not, as I have proved in the Point of Trial by Peers) and that upon these Grounds.

First, because the Words of that Statute are not, That all Laws made in England, shall be confirm'd, received, and executed in Ireland in all Points; but, That all Statutes late made within the Realm of England, concerning or belonging to the Commonweal (not Peers) of the same, shall henceforth be deemed good and effectual in Law, and received and executed in this Realm of Ireland. Now *Magna Charta* being no Law then late made within this Realm, but made at least Two hundred seventy one Years before it, can hardly (without much straining of the Words beyond their proper Meaning) be brought within the Compass of this Act; though Sir Edward Cook, in his fourth Institute, pag. 351. informs us, That Hil. 10 Jac. it was resolved by the two Chief Justices and Chief Baron, that this Word late, in this Act, hath the Sense of before, and shall not be taken in its proper Sense or Meaning; so that the Act, by this Construction, against the Sense of the Words, extends to *Magna Charta*, and to all the Acts of Parliament made in England, not only late, but even long before, yea, many Hundred Years before this Act; which, for my part, (under the Favour of those reverend Judges, who thus interpret it) I hold still disputable, yea, erroneous, and no Law at all, especially for these two Reasons.

1. Because if any Law introduced and confirm'd *Magna Charta*, and the other Laws of England, in Ireland, it is the Statute of 8 E. 4. c. 1. which confirms the Statute made in England, in the Parliament of 6 R. 2. c. 6. concerning Rapes, of which there was some Doubt made, whether it extended to Ireland? and then concludes thus: *In avoiding of all Inconvenience that might happen, because of the Ambiguity of the said Statute, Be it enacted, confirm'd, and ratified by Authority of the said Parliament, that the said Statute be adjudged and approved in Force and Strength, and may be of Force in this Land, from the Sixth Day of March last past; and that from henceforth, the said Act, and all other Statutes and Acts, made by Authority of Parliament within the Realm of England, be ratified, confirm'd, and adjudged by Authority of this Parliament, in their Force and Strength, from the said Sixth Day of March.* So that this Law, if any at all, confirm'd *Magna Charta*, and all the Statutes made by Authority of Parliament in England, to be in Force and Use in Ireland, (yet only as to the English and Irish Subjects under the King's Obedience, and none else, as I have proved,) and this Statute of 10 H. 7. which confirms only the Statutes lately made, must and doth, in Truth and Reason, relate only to the Laws made in England since that Statute of 8 E. 4. c. 1. not formerly there confirm'd by that Act: So that the Prisoner's Plea, That *Magna Charta* was confirm'd by 10 H. 7. is but a meer Mistake, and a void Plea; neither are the Judges here bound to take Notice of this Irish Act of 8 E. 4. c. 1. unless pleaded by the Prisoner, being no Law of this Kingdom, and not binding here.

2. Because the foremention'd Charters of 6 Job. 12. and 30 H. 3. &c. confirming the Use of the Laws of the Realm of England in Ireland, did not extend to settle *Magna Charta* there, (at leastwise not as to the Benefit of the natural Irish, but to the English and the Irish within the English Pale alone) as is agreed by Sir Edward Cook, and in a manner resolved by this Act of 10 H. 7. as the Words thereof, *From henceforth be deem'd good and effectual in the Law, and over that be used, accepted, and executed within the Land of Ireland, in all Points, at all Times requisite, import.* And if those Charters extended not to *Magna Charta*, which are fuller than this Act, I doubt this Law will hardly do it.

3. Admit the Law of 10 H. 7. extends to *Magna Charta* in some Particulars thereof formerly used in Ireland, yet it reacheth not to the trying of Irish Peers by their Peers now in question, for these ensuing Reasons.

1. Because Trial of Irish Peers by their Peers in Ireland, was never used or heard of, nor is there any one Instance to be found before or since *Magna Charta*, 'till 10 H. 7. which there settled that great Charter for a Law, nor from 10 H. 7. 'till 35 H. 8. nor since that, but of late, in one Case only, about twenty Years since, 'till this Instant. Now what Littleton notes of the Statute of Merton, Sect. 108. "that no Action can be brought upon that Statute for a Disparagement, for that since the making of it, it was never seen or heard, that any such Action was brought upon it against the Guardian; and if any such Action might have been brought upon this Matter, it will be intended, that some Time it would have been put in ure." The like shall I say concerning *Magna Charta*, and the Trial of Irish Peers by their Peers in Ireland, That if the Trying of Irish Peers by their Peers had been the common Law of Ireland; or if *Magna Charta*, and 10 H. 7. had establish'd it there for a Law, it would some Time or other have been there put in ure, and some Peers there would have claim'd and enjoy'd this their Privilege in point of Trial: But since it was never yet in Use there, for ought I find, nor any one can prove, before 35 H. 8. I cannot deem it the common Law, nor Privilege of the Peers of Ireland, but the peculiar Privilege of our English Peers, both by the common Statute-Law, and Great Charter of England, and no Trial of Right incident to Irish Peers, as it is to English; therefore this kind of Trial neither is confirm'd to, nor intended to be conferr'd on Irish Peers by *Magna Charta*, which is but a Confirmation only of our common Laws of England, and no Introduction of any new Law here; and so should introduce no new Law there, but confirm the common Laws and Customs there formerly used, and so the Trial by Peers is not there settled in respect of the Irish Peers, by the Statute of 10 H. 7. Now that which principally confirms me in this Opinion, is the two special Acts of Parliament, made in Ireland in 2 Eliz. c. 1. and 6. already cited, which create a special Form of Trial of Irish Peers, not by their Peers there, of Irish Blood, but by their Peers of that Realm, of the English Blood alone, only in the new Treasons and Premunires specified in, and created by those two Acts, but in no other Treasons; which Clauses had been meerly nugatory

gatory and superfluous; had the Trial of *Irish* Peers in *Ireland*, by *Irish* Peers; been the Birth-right, and known Privilege of *Irish* Peers, either by the Common Law there used; or by the Custom of *Ireland*, or by *Magna Charta*, with this Act of 10 H. 7. confirming it. It therefore never being the Intent of this Act, nor of *Magna Charta*, to grant any new Privilege, or Form of Trial, to *Irish* Peers, which they never formerly enjoyed, neither the one nor other will sufficiently support the Prisoner's Plea, nor indulge him any Trial here or there by his Peers of *Ireland* (at least of *Irish* Blood) for so horrid a Treason as this; which I hope is a satisfactory Answer to this Objection, since Custom is the best Expofitor of all antient Laws, as Sir Edward Cook declares in his *Commentary on Littleton*, Sect. 108. f. 81. b.

4. Admit the Objection true, That *Magna Charta* extends to *Ireland*, by virtue of this Act of 10 H. 7. so far as to give *Irish* Peers, in *Ireland*, (though not of the *English* Pale) a Trial by their Peers, which they had not before its Confirmation there; yet then I answer, That this Statute of 35 H. 8. c. 2. upon which the Prisoner is arraigned, by making all Treasons done and perpetrated in *Ireland*, triable in *England*, when there is just Occasion, (as now there is, in this Time of a universal horrid Rebellion, and in sundry other fore-mentioned Respects) repeals this Clause of *Magna Charta*, and deprives the Prisoner of the Benefit of his Peerage, if at all conferred on him by it, and the Act of 10 H. 7. Since it is most certain, that Statutes made in the Parliaments of *England*, (being the supreme Kingdom and Court, to which *Ireland*, and its Courts, are subordinate, and whose erroneous Judgments in their High Courts and Parliaments there, were only reversible here in *England*, in the King's Bench and Parliament of *England*, as is evident by *Claus. 7. H. 3. par. 2. m. 10. and Claus. 29. E. 3. m. 12. 8 H. 6. rot. Parl. n. 69. Cook's 4 Instit. p. 356. Mr. St. John's Argument at Law, at Strafford's Att. Rusworth, Vol. 8. p. 696, 698. Keilway, f. 202. b. Br. Error, 127. Fitz. Nat. Bre. f. 24. Co. 7 Rep. f. 18. a. Calvin's Case*) do oblige those of *Ireland*, not only before, but ever since 10 H. 7. when *Ireland* is either particularly named, or generally included, as is agreed by *Rastal's Abridgement*, Title *Ireland*, 11 E. 3. c. 2. and 10 E. 3. ch. 8. 4 E. 4. ch. 1. 3 H. 7. ch. 8. 14 H. 4. *Rastal's Parceners* 2. 27 E. 3. of the Staple, ch. 1. 18. 14 Eliz. ch. 5. 1 H. 7. *aff. 3. 3 H. 7. fol. 10. 2 R. 3. f. 12. and Cook's 7 Rep. Calvin's Case*, f. 17, 22, 23. 4 *Instit. p. 35. it being so resolved, as to this Purpose, by all the Judges of England, in O'ourk's, and Sir John Perrot's Cases, cited in Calvin's Case, and adjudged in MacMahon's Case, tried at this Bar the last Term, that this Act of 35 H. 8. c. 2. binds those of Ireland, for Treasons there committed, and makes them subject to a Trial here, whether Peers or Commoners, as I have already proved.*

5. It is unquestionable, That every Commoner of *Ireland* hath as large, as full an Interest in *Magna Charta*, the Laws and Privileges of *England* and *Ireland*, and as much Right to be tried in *Ireland*, for Treason there committed, by an *Irish* Jury, as any Peer in *Ireland* hath in or by them to be tried there by his Peers, these Laws

being no Respecters of Persons, and every Man's Birth-right alike, of Commons as much as of Peers, as the Laws and Great Charter of *England* are; *Magna Charta* being as largely made, and as amply granted to the meanest Freeman, as to the greatest Peers of *England* and *Ireland*, as the Prologue and 9, 14, 15, 19, 21, 22, 26, 27, 29 Chapters thereof resolve.

Since then this Act of 35 H. 8. chap. 2. doth, without all Controversy, (as hath been resolved in the fore-cited Case) deprive the Commoners of *Ireland* of a Trial in *Ireland* by *Irish* Commoners, and subjects them to a Trial by an *English* Jury here, for Treasons there committed; for which, by the Common Law, the Customs of *Ireland*, and *Magna Charta*, before the Statute of 26 H. 8. and this Act of 35 H. 8. they could be no where tried, but only in *Ireland*, not in *England*, as is collected from the Case of Sir Elias Ashburnham, Tr. 18 E. 3. *coram Rege*, Rot. 14. cited by Sir Edward Cook, in his 4 *Instit. p. 356.* (the principal Case that can be objected against me, which makes nothing to the Purpose, being long before these Statutes were made :) Therefore, by the self-same Reason, it shall take away the Trial of *Irish* Peers in *Ireland* and *England* by *Irish* or *English* Peers, for Treasons perpetrated by them in *Ireland*, and subject them to a Trial by an ordinary *English* Jury at this Bar, or before Commissioners in any County of *England*, as I have already proved; which Jury here are, in Truth, Peers to all *Irish* Peers, being here no Peers at all, but only Commoners.

If it be objected, That this Law of 35 H. 8. chap. 2. cannot abrogate *Magna Charta*, all Acts and Judgments against *Magna Charta* being declared void, by 25 E. 1. ch. 1, 2, 4. 28 E. 1. c. 1. and 42 E. 3. ch. 1. therefore it shall not take away the Trial by Peerage from *Irish* Peers:

I answer, 1. That you may, by like Reason, object, that it cannot take away a Trial in *Ireland*, by an *Irish* Jury, from *Irish* Commoners, seeing it cannot repeal *Magna Charta*, and the Common Law. But this Objection is yielded, and adjudged idle, in case of an *Irish* Commoner; therefore it is, and must be so in case of an *Irish* Peer.

2. The objected Statutes do make void and null all Acts and Statutes made against *Magna Charta*, before the Parliaments wherein they were made; but they extend not at all to future real Parliaments and their Acts, subsequent Parliaments having always had Power to controul, alter, and abrogate precedent Acts; yea, the very Common Law, and Great Charter itself, when inconvenient or defective, as all our Books accord: Therefore Sir Edward Cook, in his 4 *Institute*, p. 42. resolves, and proves at large, by 11 R. 2. c. 3. 5 *rot. Parl. n. 22. 48, 49. 1 H. 4. c. 3. 2 H. 4. c. 22. 21 R. 2. c. 16. 1 H. 4. n. 48. 70. 144. 21 R. 2. n. 20, 21, 36, 37, 85, 86, 89, 90.* that "Acts, (yea, and Oaths) against the lawful Power of subsequent Parliaments, that they shall not repeal such and such Laws (tho' mischievous or unjust) bind not at all, and are meerly idle:" For *eodem modo quo quid constituitur dissolvitur*; those who have Power to make any Laws, having as great, as full a Power to controul, alter, or repeal them, when they see Cause and Necessity for it; as you may read in *Rastal's* and *Poulton's Abridgements of Statutes*,

\* Co. 2 *Instit. Proem.*



and the Statutes at large; repealing former Acts; and how often *Magna Charta* hath been altered, supplied, or \* repealed, in some Particulars; in and by our Parliaments, since its making, by subsequent Acts, both by prescribing, creating new Imprisonments, Forfeitures, corporal Punishments, Fines, Executions, Treasons, capital Offences, Customs, and Imposts, not then known, or different Ways, or Places of Trial, not then in Use, in Cases of foreign Treasons; and the like, by a Jury in *England*, not then usual, but since confirmed by the Statutes of 26 H. 8. c. 13. 28 H. 8. c. 25. 33 H. 8. c. 27. 35 H. 8. c. 2. 5 and 6 E. 6. c. 11. contrary to, or † different from *Magna Charta*, and the Common Law, 2 E. 6. c. 24. is so well known to all Lawyers, that I will not spend Breath to prove it.

3. I answer, That this Act of 35 H. 8. doth both alter, and, in some sort, repeal *Magna Charta*; and the Common Law, as to the Point and Place of trying foreign Treasons in *England* itself, as to *English* Peers and Commoners, to whom alone the Great Charter was first granted, they being not triable in *England*, by Jury or Peers, for any foreign Treasons, by the Common Law, or Great Charter. Therefore, *a Fortiori*, it must both alter and repeal the Common Law and Great Charter, as to *Irish* Subjects, for whom the Great Charter was never originally made, nor yet directly confirmed to them by 10 H. 7. but only implicitly and doubtfully at most, as I have proved.

4. I answer, that this Act of 35 H. 8. doth no ways abrogate or alter *Magna Charta*, in Truth or Reality, but rather ratify and confirm it, in the Form and Manner of this Trial, though not in the Place: For *Magwire* being only a Peer in *Ireland*, but not in *England*, every Freeman of *England*, that shall be impaneled to try him, is, in Truth and Law, his Peer here. And this Act, enacting that he shall be tried, not by Martial Law, or the Judges themselves, but by good and lawful Men of the Shire, where the King's Bench shall sit, who are his Equals and Peers in *England*, and saving the Trial by Peers to every Peer of this Realm, after his Indictment found by Jury. This Way and Form of Trial, by Jury in *England*, being then and now the Law of the Land, is no Contradiction or Repeal at all, but a direct Pursuit and Confirmation thereof, according to its Letter and Meaning. And so much in Answer to this grand Objection, wherein I have been over tedious, but shall recompence it with Brevity in the Remainder.

The Second Objection (a mere Branch of the former) is this.

That if *Irish* Peers should be triable by an ordinary Jury within this Law, for Treasons done in *Ireland*, this might prejudice the whole Nobility of *Ireland*, who, by colour of this Act, might be sent for out of *Ireland*, and tried here for Treasons, Misprisions, and Concealments of Treasons there committed, and so quite deprived of their Birth-right of Trial by their Peers, which would be of dangerous Consequence.

I answer, 1. That I have manifested, that this Trial by Peers was never deemed, claimed, nor enjoyed in *Ireland*, as a Privilege, by *Irish* Peers, nor ever used or practised in that Land before this Act, and but once claimed since, and that in

*Ireland*; therefore it cannot be intended, that this Statute, or the Makers of it, ever imagined to save this manner of Trial by Peers only to *Irish* Peers, which they never enjoyed, nor so much as once claimed or possessed before the making of it. Neither can it be any Injury or Injustice to deprive them of that now, they never heretofore claimed, used, or enjoyed, as their Privilege, or Birth-right, being not indubitably settled on them by any Law that I have seen; but only in some special Cases of Treason, since 35 H. 8. whereof this is none, by the late Acts of 2 Eliz. c. 1 and 6. when as this Privilege is taken from them, not by a bare-strained Exposition, or Implication, but by this express Act of Parliament made long since for the common Good and Safety of *England* and *Ireland*, not yet repealed.

2. This Objection, with as great or greater Strength and Colour, might be made for all the Commons of *Ireland*, (far more numerous and considerable than their Peers) they being deprived by it of Trials by *Irish* Juries in their native Country, than for *Irish* Peers alone; which Trial here against *Irish* Commons, was never of late excepted against, this Law having been so often adjudged to reach to them: Therefore there is no Colour, to exempt *Irish* Peers out of it.

3. This pretended Prejudice to *Irish* Peers, in point of Trial by their Peers, is solely in Cases of High Treason, or Misprision and Concealments of it, and no other, the Statute extending to no Crimes, but these alone: Therefore the Mischief is not great in general; and no *Irish* Peers, I presume, but such who have traitorous or disloyal Hearts, will deem it a Disparagement, or Injustice to them, to be secluded of a Trial by their Peers, only in these Cases of High Treason: And if others, who are professed Rebels and Traitors, murmur at it, (as none else will) we need not much regard it, nor prefer their pretended Privilege, before our own Kings, Kingdoms, Religions, yea, *Ireland's* Safety and Welfare, in bringing them to a speedy Trial and condign Punishment for their Treasons here in *England*, by virtue of this Law.

4. Even by the very Common Law, before this Act, Treasons committed in *Ireland* by Peers or Commons, were triable before the Marshal of *England*, in *England* itself, as is evident by the Parliament Roll of 12 H. 6. p. 9. § where *John* Lord Talbot, being the King's Lieutenant in *Ireland*, accused *James* Bottiler, Earl of Ormond, of certain Treasons (there particularly recited) by him committed in *Ireland*, before *John* Duke of Bedford, Constable of *England*, in his Marshal's Court; which Accusations the King, by the Advice of his Parliament, did discharge and abolish, to appease the Differences between them: Upon which else he might have been proceeded against, though an *Irish* Peer, without any Trial by his Peers; (see *Cook's 4 Instit.* p. 123, 124.) Therefore *a Fortiori* this special Act of Parliament may subject *Irish* Peers to a Trial by a substantial *English* Jury in *England*, for Treasons done in *Ireland*, since triable for them here before its making even in the Marshal's Courts.

5. This Statute doth not simply take away the Trial of all Treasons committed in *Ireland*, from thence, only it makes them all triable here, when

\* See *Horn's Mirror of Justices*, p. 314, 315.

† See an exact Abridgement of the Records, p. 372, 379, 380.

§ See an exact Abridgement, p. 567, 568. *Cook's 4 Instit.* p. 123, 124.

the King, State, and Parliament shall see just Cause or Occasion for Trial of them here, as now they do in these Times of general Rebellion there, when the Rebels are so predominant, and the Times such, that no safe, fair, or indifferent Trial of this Traitor, can be there had or expected: And seeing the Law and common Reason will inform every Man, that the King and State will never be at the Cost and Trouble to send for Traitors and Witnesses out of Ireland, to try them here, but upon a most just Occasion, and urgent Necessity, to prevent either a Failure or Delay of Justice, in case of horrid Treasons and Rebellions: And no *Irish* Peer, who hath any Loyalty in his Heart, or Reason in his Head, will deem it a Dishonour or Prejudice to the whole *Irish* Peerage in general, or the traitorous Peers, sent hither to be tried, in particular, to be outed of a Trial by *Irish* Peers, in such Cases of Necessity, and Expediency only; it being better and safer for this Realm, and Ireland too, that these native *Irish* Peers, who have been proved to break out into actual Rebellion, in all Ages, (as this Prisoner's Ancestors have done, as much, or more than any, his \* Grandfather being the first Man that broke forth in *Tyrone's* Rebellion) should be subject to Trials for the same, by ordinary *English* Juries here, and outed of their Peerage, than that such Arch-Traitors and Rebels, as the Prisoner and his Confederates are, (guilty of the Effusion of many Thousands of Protestants and *Englishmen's* Bloods) should escape uncondemned, or be executed by Martial Law. And our Law, in this Case, which concerns the Safety of two Kingdoms at once, will rather suffer a particular Mischiefe, especially to rebellious Peers, than a general Inconvenience to both Realms, and all loyal Subjects in both.

6. Though the Trial of all *English* and *Irish* Peers, by a legal Indictment, Presentment, and Jury of their Peers alone, and not by Martial Law, or Commissioners themselves alone, be an essential fundamental Right and Privilege, for the Security of their Lives and Estates, which our

Parliaments, in all Ages, have been very curious to preserve, and not to alter; yet the Trial of Peers by Peers alone, (not by a Jury of other Freemen) for the most Part, (if rightly considered) is rather a meer Punctilio of Honour, than Matter of real Privilege or Benefit to Peers; and by Intendment of Law and common Experience, a fair and legal Trial, by the Oaths of twelve honest, substantial, indifferent *English* Gentlemen, or Freeholders, to whom the Prisoner may take all sorts of lawful Challenges by Law, † which shall be allowed, if there be any just Cause of Suspicion of Partiality, Injustice, Consanguinity, &c. besides his peremptory Challenge of thirty-five Jurors, without Cause (which Challenges, § Cook affirms, shall not be admitted, or granted, in case of Trial by Peers) it being the usual, ancient || Trial, in all Cases between the King and ordinary Subjects, between Man and Man, Peers and Commoners, both in all Civil and Criminal Causes whatsoever, it is, and will be every way as just, as beneficial to a Peer, in point of Law, as a Trial by twelve Peers, upon their Honours only, \*\* without Oath: And the Exchange only of the Form of Trial, by twelve indifferent *English* Gentlemen of Quality, upon their Oaths, for twelve *Irish* Peers of *English* Blood, nominated and appointed only by the King, or his †† Lord Deputy of Ireland, upon their Honours, without Oath, in this Case of Necessity, can be no Injustice, Injury, or Prejudice to the *Irish* Peers in general, nor yet to the Prisoner in particular: The rather, if we consider,

1. That every Indictment, by which an *English*, or *Irish* Peer, is, or can be tried, must first be proved before a Grand Jury of Commons, (as this very Statute prescribes) and found by them upon Oath, not by a Jury of Peers, which is a kind of preparatory Trial of a Peer by Jury, without which there can be no proper Trial by Peers, as is resolved, *Cook's 3 Instit.* p. 28, 30, 31, 32. and 1 *H. 4. 1.*

2. That in Cases of Appeal §§ brought by a common Person for Murder, Rape, Robbery,

\* See *Cambden's Ireland*, p. 111, 120, 121, 199.

† See *Stamf. l. 3. c. 7. 7 H. 7. 12. Brook's Challenge*, 217. *Fitzb. Statbam's and Brook's Abridgements*, and *Asb's Table*, Title, Challenge.

§ See *Cook's 3 Instit.* p. 27.

|| See *Fitzb. Brook, Asb*, Title, Jurors, Trial, Inquest.

\*\* 1 *H. 4. 2.* 27 *H. 8. 22.* & 13 *H. 8. 11, 12. Brook's Treason*, 29, 33, 10 *E. 4. 6. Cook's 3 Instit.* p. 28, 29. 2 *Inst.* p. 49.

†† 2 *Eliz. c. 1.* & 6.

§§ Mr. *Prynne* in his Preface to this Argument says, That Errors themselves in the Courts of Ireland, with other Grievances, could not antiently be redressed in the Parliaments thereof, but only in England, till 29 *Ed. 3.* as is evident by this memorable hitherto unprinted Record made for Relief in such Cases. *Crook's 1 Rep. m. 14 Car. p. 511, 512.*

Clauſ. 39. E. 3. m. 12. De erroribus corrigendis in Parliamentis tenendis in Hibernia: Rex, Justiciario & Cancellario suis Hibernie, salutem. Ex parte nonnullorum fidelium nostrorum Communitatis terre nostre Hibernie, Nobis est graviter conquerendo monstratum, ut cum ipsi dampna & gravamina quamplurima a magno tempore sustinuerint ex hoc, quod ipsi terras & tenementa sua in manum nostram per ministros nostros terre predictae, cum nomine districtionis, cum ex causa transgressionis, sine alienationis sine licentia nostra factae, voluntarie & absque causa rationabili capta, extra manus nostras, licet rite & processu debito inde penes vos & alios de Consilio nostro in partibus illis, juxta legem & consuetudinem terra predictae persecuti fuissent recuperare non possunt. (See Pat. 8. Johan. Regis, m. 1, 2. Pat. 9. Johan. Reg. m. 4. n. 26.) Et etiam ex hoc, quod Erroris qui in Recordis & Processibus placitorum coram Justiciariis nostris & aliis Curis & Placitis in eadem terra, quae Recordum habent, habitis, & in redditionibus judiciorum & placitorum eorundem intervenisse pretenduntur in Parliamentis in eadem terra corrigi nequeunt, nec alias justitia inde fieri sine remedio in Anglia querendo; propter quod, quidam propter labores & expensas circa praemissa oppositas ad maximam miseriam & inopiam deducuntur, & quidam omnino exheredati existunt; unde iidem fideles nostri Nobis cum instantia supplicarunt, ut super praemissis remedium congruum apponi faciamus. Et quia videtur Nobis & Consilio nostro durum esse & grave, quod conquerentes super assentione Justitiae de injuriis sibi illatis in partibus praedictis, taliter absque remedio fatigerentur; per quod pro quiete, & indemnitatem populi nostri in terra praedicta sub nostro regimine existant, cui in exhibitione Justitiae sumus debitores; ordinavimus, quod de omnibus terris & tenementis in terra praedicta per Justiciarios, Esceatores, seu quoscunque alios Ministros nostros, sub Sigillo nostro in manum nostram captis, illis qui pro eisdem terris & tenementis extra manum nostram debito & justo processu coram vobis prosequi voluerint, super hoc plena Justitia secundum legem & consuetudinem terre nostrae Angliae, & dictae terre nostrae Hibernie fiat, quibuscunque mandatis nostris sub magno vel privato Sigillo nostro Angliae, vobis aut aliis Ministris in terra praedicta ante haec tempora directis, non obstantibus. (See 2 E. 3. c. 8. 18 E. 3. Stat. 3. 20 E. 3. c. 1. 2 Clauſ. 5 E. 3. part 1. m. 27. 1 R. 2. n. 96. 2 R. 2. n. 51. Clauſ. 20 E. 3. part 1. dorf. 13.) Et quod ad prosecutionem omnium & singulorum qui conqueri voluerint Erroris in Recordis vel Processibus coram aliquibus Justiciariis, seu aliis Ministris praedictis, intervenisse, Rotuli eorundem Recordorum & Processuum in Parliamentis nostris in eadem terra tenendis, per Justiciarios seu Ministros, coram quibus Recordis & Processus illa fuerint, deferantur; & ibidem eadem Recordis & Processus diligenter recitentur & examinentur, & errores si quos in eisdem invenire contigerit, debite corrigantur. Et ideo Vobis mandamus, quod Ordinationem praedictam in terra nostra praedicta teneri, & partibus conquerentibus plenam & celerem Justitiam fieri faciatis in forma praedicta, quibuscunque mandatis vobis aut aliis in terra praedicta ante haec tempora in contrarium directis, non obstantibus. Ita quod aliquis materiam non habeat Nobis pro defectu Justitiae, super casibus praedictis, de cetero conquerendi. Teste Rege apud Westm. 30 die Augusti. Per ipsum Regem & Consilium.



or the like, and likewise in case of a Premunire against an *English* Peer, where his Life is not brought into question, he shall not be tried by his Peers, but by an ordinary Jury as other Men; Trial of Peers by Peers being only in Cases of Indictments for Treasons or Felonies at the King's Suit; and no other; as is clear by the Statute of *Magna Charta*; ch. 29. *Neither will we pass upon him, or condemn him, without the lawful Judgment of his Peers; &c.* the Words only of the King, not of the Commons: In this our Books are express in point, all cited in Sir *Edw. Cook's* 2 Institute on this very Chapter of *Magna Charta*, ch. 29. in his *Pleas of the Crown*, or 3 Instit. c. 2. p. 30, 31. & 20 *Ed. 4.* 6. b. Now this Case in question concerning not only the King, but the whole Kingdom of *England* and *Ireland*, and those many Thousands of common Persons whose innocent Blood hath been shed in *Ireland* by him and his confederate Rebels, crying out for Vengeance and Justice against him without Delay; he may thereupon be justly tried by an ordinary Jury of Commons, as well as in case of an Appeal of Murder brought by a common Person.

3. Peers of Parliament, even of this Realm, not by inherent Nobility and Birthright, but only in right of their Baronies, which they hold in *auter Droit*, as Archbishops, Bishops, Abbots, Priors, and the like, shall not be tried by their Peers for Treasons or Felonies at the King's Suit, but only by an ordinary Jury; as Archbishop *Scroope* of *York*, *Cranmer* Archbishop of *Canterbury*, \* *Adam de Orleton*, or *Tarlton*, Bishop of *Hereford*, *Mark* Bishop of *Carlisle*, *Fisher* Bishop of *Rocheſter*, and others were tried, 3 *Ed. 3.* f. 6. *Kelway's Reports*, f. 184. *Stamford's Pleas of the Crown*, f. 135. *Crompton's Jurisdiction of Courts*, f. 12, 19. *Hall's Chron.* 6 *H. 4.* f. 25. Co. 3 *Inst.* f. 36. Now if these very *English* Peers, to whom *Magna Charta* was immediately granted by Name of Archbishops, Bishops, Abbots (being the first Persons mentioned in the Prologue and ch. 1 and 29 of this Charter) shall be outed of their Peerage in these Cases of Indictment at the King's Suit, though within the very Letter of *Magna Charta*, because they are no Peers of *England* by Blood or Birthright, but in right of their Churches, then, *a fortiori*, *Irish* Peers shall be deprived of their Peerage by this special Act, who are not within the Letter or Intent of *Magna Charta*, never made for them, but for *English* Noble Blood. And if it be neither Injustice, nor Injury, nor Inconvenience, to deprive these Ecclesiastical *English* Peers of a Trial by Peers in Cases of Treason or Felony at the King's Suit, though within the Letter of *Magna Charta*, and to try them by an indifferent Jury of Freeholders; it cannot be reputed any Injustice, Injury, Prejudice, or Inconvenience at all now to out this *Irish* Peer of his Peerage here, where he is

no native Peer, for such an horrid Treason as this.

4. *Irish* Peers are no Peers at all in *England*; upon which Account and Reason if they commit Treason here, they shall be tried by an ordinary Jury: Therefore to try them only by Freeholders, not by Peers, in *England*, can be no Injury nor Dishonour to their Peerage, unless it were in *Ireland* where they are Peers; and yet have been seldom or never hitherto tried there by their Peers, as I have proved.

5. The very Statutes of *Ireland* itself, made by the Peers and Commons thereof to prevent many Mischiefs by Thieves, Murderers, and Rebels in that Realm, do deprive both the Lords and Commons there of any legal Trial at all both for their Lives and Estates too; Witness the Statutes 28 *H. 6.* c. 1. 3 & 5 *E. 4.* c. 12. and expose them to the Judgment, Slaughter, and Plunder of particular Men, in some Cases authorizing "all Manner of Men that find any Thieves robbing, breaking up Houses, by Day or Night, or going or coming to rob or steal, having no faithful Man of good Name and Fame in their Company, in *English* Apparel, to take and kill those Thieves (though Peers) and cut off their Heads (without Indictment or Jury) and seize their Goods, without any Impeachment of the King, his Heirs, Officers, or any other, for which they are to receive a Sum of Money from every Plow-land and Person of Estate within the Barony where they shall slay and behead such Thieves." And 25 *H. 6.* c. 4 & 5. "If any *Englishman* shall have any Hair or Beard upon his upper Lip like the *Irish*, it shall be lawful for every Man to take their Goods, as *Irish* Enemies, and to ransom them as Enemies: And if any *Irish* Enemies received to the King's Allegiance, shall afterwards rob, spoil, and destroy the King's liege People, it shall be lawful for every Liegeman that may meet with him afterwards, to do with him, and his Goods and Chattels, as to Enemies who were never liege, and to ransom them at their free Will, without any Impeachment of the Law." And Ch. 6. "If any Men, except Knights and Prelates, shall wear gilded Bridle, Peytrels, or other Harness, that it shall be lawful to every Man that will to take the said Man, his Horse and Harness, and to possess the same as his own Goods, without Indictment or legal Trial." All which would be monstrous in *England*. Therefore it is much more legal and just, and no Injury at all, to try the Prisoner, an Arch-Rebel, in *England*, † in the Time of War and Combustion in *Ireland*, for his Treasons there perpetrated, by an indifferent, honest, lawful, *English* Jury, upon an Indictment found by the grand Inquest, than thus to kill or behead such Malefactors in *Ireland*, and seize both them and their Goods as Enemies, and ransom them at

\* *Gwyn's Catalogue of Bishops*, p. 232, 233, 605, 606.

† Mr. *Prynne* in his Preface to his Argument says, I shall here insert one pertinent Record, to manifest that the trying of *Irish* Malefactors in *England*, the binding them to appear, the recording their Defaults, and giving Judgment against them for not appearing here for Murders, Robberies, and Felonies, committed or acted by them in *Ireland*, is no Novelty (having omitted it in my Argument) it being in use in the ninth Year of King *John*, as this Patent manifests.

Rot. Pat. Ann. 9. *Joban.* Reg. m. 4. n. 46. Rex, M. filio Henrici, Justiciario Hibernie, salutem. Mandamus vobis, quod deduci faciatis secundum judicium Comitum Dublin, Galfredum de Marisco & alios qui relatati sunt de incendio, & roberia, & morte hominum, & aliis rebus que pertinent ad Coronam nostram, unde eis dies datus est coram nobis in Anglia, a die sancti Michaelis ad 15 dies, ad quem non venerunt, nec pro se responsales miserunt, & absentiam suam die illo Attornatis eis in defaultam. Et ipsos deduci faciatis secundum judicium predicti Comitum de vita & membris, & obsequiis, & vadiis, & plegiis. Teste meipso apud Theoukelbury, 12 die Novembris.

pleasure, without Trial, Jury, or Indictment, and not only to indemnify but reward those that do it, by Laws there made by the *English* and *Irish* themselves; which will answer all Objections, and wipe off the least Shadow of Injustice in this Case and Trial.

The third Objection is this, That if *Irish* Peers had been within this Law, there being so many Rebellions in *Ireland* since its enacting, we should have had some Precedents of *Irish* Peers here tried by Jury e're this: But there is no such Precedent extant; therefore certainly *Irish* Peers for Treasons perpetrated in *Ireland*, are out of this Act.

To this I answer, 1. That no *Irish* Peers have been tried by their Peers in *Ireland* for Treasons since this Act; ergo they are within it.

2. That this Argument is merely fallacious, and non-concludant; for the Reasons why no *Irish* Peers have been tried here since this Law by virtue of it, is not because they were not deemed within it, but for other Reasons.

1. Because most of the *Irish* Peers who have been in actual Rebellion since this Law, were \*either actually slain in the Wars, or fled the Kingdom, or else were received into Grace, and pardoned before Trial upon their Submissions, or else attainted and executed by Act of Parliament, or by Martial Law in *Ireland*. And by these means only avoided their Trials here.

2. Because some *Irish* Rebels, as great as *Magwire*, or any of their Peers in Power and Estate, have been heretofore tried and executed for Treasons in *England* by virtue of this Law, though brought over hither from *Ireland* against their Wills; as *Orourk* and Sir *John Perrot* of old, and *Mac-Mabon* the last Term; and the Trials of these three here are direct Precedents in Point, and good Warrant by this very Act for the Trial also of this *Irish* Peer, as I have proved.

3. This Statute is not very ancient, yet still in as full Force as ever; and if this be the first Precedent of an *Irish* Peer that came judicially in question here in *England*, to be tried upon it since its making, it is no Argument he is out of this Law, but rather an Inducement to make him a leading Precedent to those rebellious Peers of that Nation, who have been the Ringleaders of the ordinary Commons there in this grand Rebellion, there being no Precedent, Judgment, nor solid Reasons against it; yea some Judgments in case of *Irish* Commons, and many unanswerable Reasons, for it.

The fourth Objection is, The Opinion of the Book in *Dyer*, f. 360. 1. forecited, recited in *Crompton's Jurisdiction of Courts*, f. 23. a. and Mr. *St. John's Argument at Law at Strafford's Attainder*, That an *Irish* Peer cannot be tried here in *England* for Treason done in *Ireland*, neither by his Peers, nor by a Jury; because he is no Subject of *England*.

To this I have already given an Answer, and shall here only add, 1. That the only Reason given in the Book hath been since several times adjudged to be no Reason at all nor Law by all the Judges of *England*, a Subject of *Ireland* being a Subject of the King of *England* in all Places, as is adjudged in *Calvin's Case*, and that *Wrey* disclaimed any such Opinion delivered by him as is there reported. Therefore the Reason of this Opinion being adjudged erroneous, and no Law,

the Opinion itself grounded on it must needs be so too; the rather, because the Opinion there cited was upon a Case casually put and moved out of Court by way of Discourse, without Study or Argument, and suddenly delivered only by *Dyer* and *Gerrard* (since *Wrey* disclaimed it) but not given upon any Cause actually depending or debated and argued in Court. 2. That it is a full Authority for me, both because it determines there can be no Trial of an *Irish* Peer by his Peers in *England* but only by a Jury, and that in *Ireland* itself Peers are not used to be tried by Peers, but attainted by Act of Parliament; therefore an Authority point-blank against the Prisoner's Plea.

The fifth Objection is, *Orourk's Case*; which in Judge *Anderson's* own Book of Reports is put thus, Whether *Orourk*, an *Irish* Subject (and no Peer nor Baron of *Ireland*) might be tried by this Act here in *England* for Treasons committed in *Ireland*? Which Words (*nient esteant un Peer ou Baron de Ireland*) in the putting of the Case seems to intimate, that in that Case the Opinion of the Judges was, That an *Irish* Peer was not within this Act.

To which I shall return this brief Answer, That this Clause, Not being a Peer or Baron in *Ireland*, in the putting of that Case, was only a Description of the Quality of his Person, he being no Peer or Baron of that Realm, not any Point in or Part of the Case, there being not one Syllable in the whole Debate or Argument of it, by way of Admission, or otherwise, that an *Irish* Peer was not within this Act: And in this very Case the Judges resolved the Book in *Dyer* to be no Law, and *Wrey* disclaimed any such Opinion of his therein reported, as Sir *Edward Cook's* Institutes on *Littleton*, fol. 261. b. record.

The sixth Objection is this, (intimated in an Order of the Lords House) That this may much concern the Peers of *England*; for this Law for trying foreign Treasons is enacted in *Ireland*; and so by colour of it *English* Peers may be sent over into *Ireland*, to be tried there by a Jury of *Irish* Commoners, for Treasons done in *England*, as well as *Irish* Peers sent thence to be tried by ordinary Juries here in *England* for Treasons committed in *Ireland*.

I answer, 1. That there is no such Law extant in *Ireland*, that I can find, among all their printed Statutes; so as this is a vain Surmise.

But, 2. If there were any such Law there, yet *England* being the supreme Realm to *Ireland*, may make Laws in the Parliament here to bind the *Irish* Peers and Commons; but the Parliament in *Ireland* being a † subordinate Realm to *England*, never yet did, nor can make any Laws at all to bind any *English* Peers or Commons for things done in *England*, until the Rebels there shall be able to conquer *England* (which I hope they never shall) as we have conquered them. Therefore we need not fear any such obliging Laws of theirs, or the Trial of *English* Peers in *Ireland*. So as this vain Fancy is quite out of doors, and the Lords themselves upon Conference with the Commons, have been fully satisfied that this Case no ways concerneth the Peers of *England*, whose Trial by their Peers is by direct Proviso saved to them in this Act; and therefore cannot come in question, or be taken from them by Pretence of any such Law established in

\* See the *Annals of Ireland*, and Mr. *Cambden in Ireland*, p. 121 to 200.

† See *Croke's Rep.* p. 264, 511, 512.



*Ireland*: Whereupon they have reversed their Order, which seemed to give some Colour for this Objection.

Pat. 48 H. 3. pars 1. m. 8. I find this memorable Record: "Rex, &c. omnibus salutem. Cum secundum consuetudinem hactenus in *Hibernia* obtentam, Utlagati in Regno nostro *Angliæ* pro Utlagatis in *Hibernia* haberi non consueverunt, et *Gregorius le Somner*, ratione Utlagariæ in ipsum promulgatæ in regno nostro *Angliæ*, nuper captus fuit in *Hibernia* et in *Angliam* reductus et imprisonatus; Nolumus quod fidelibus nostris *Hiberniæ* aliquod præjudicium ex hoc in posterum gravetur. In cuius, &c. Teste Rege apud Turrim London. 26 die Junii." If *Englishmen* outlawed in *England* could not by the Law and Custom of *Ireland* be taken upon a *Capias Utlagatum* in *Ireland*, or reputed as outlawed Persons there, as this Patent resolves, much less can they there be tried for any Treasons acted in *England* by colour of this Law, nor can our *English* Peers be there tried for Treasons here by an *Irish* Jury.

A seventh Objection, which I have heard made by some, is as vain and absurd as the former; That if *Irish* Peers be within this Act for Treasons done in *Ireland*, then by the same Reason Peers in *Scotland* might be sent for and brought into *England*, and there tried by an ordinary Jury by virtue of this Law, for Treasons done in *Scotland*; which would be a great Prejudice to the Peers of *Scotland*, and the Privileges of that Kingdom.

I answer, 1. That this Act extends not to any Treasons of *Scots* Lords or Commons committed or acted in *Scotland*, and triable there, though it reach to *Irish* Lords and *Ireland*.

1. Because this Act was made long before the Union betwixt *England* and *Scotland*, by 1 Jac. c. 2. 3 Jac. c. 3. 4 Jac. c. 1. & 16 Caroli; whiles that *Scotland* was under the absolute and immediate Power of its own Kings, and not of the Kings of *England*; and so it cannot extend to them.

2. *Scotland*, although the \*Kings of it have often done Homage to the Kings of *England* in ancient Times (as their Sovereign Lords) was still an absolute independent Kingdom in this respect of being subject only to, and governed by its own Parliaments and Laws; but not subordinate to, nor governed by the Laws or Parliaments of *England*, which never bound them heretofore, nor now, as they did and do *Ireland*; their Laws and Statutes and ours still continuing different. Therefore this Act neither did nor could bind the *Scots* Peers or Commons in Point of Trial here for Treasons committed in *Scotland*, as it binds the *Irish* (still subject to our Laws and Parliaments) for Treasons done in *Ireland*.

3. The very Acts of Pacification § between both Kingdoms, and the Solemn League and Covenant passed this Parliament here and in *Scotland* too (which do specially reserve the Trials of all Traitors and Delinquents of their Kingdom to the Trial and Judicatory only of their own Parliaments and Realms) have for ever provided against this vain Pretence, and secured not only all *Scottish* Peers but Commoners too against any Trials here by virtue of this Act for Treasons

done in *Scotland*; therefore I shall give it no further Answer.

The last Objection I can think of is this; That in every Case of Treason or Felony new made by Statute, the Lords of Parliament in *England* shall have their Trial by their Peers saved, notwithstanding the Statute provides not for it by express Words; so that Proviso's of Trial by their Peers inserted into them in such Cases are but idle, and *ex abundanti*, because it is provided for both by the Common Law, and by *Magna Charta* itself, c. 29. and so was it adjudged in the Case of the Lord *Hungerford* heretofore, and in the Earl of *Castlehaven's* Case of late for Buggery, upon the Statute of 25 H. 8. c. 6. *Stamford's Pleas of the Crown*, f. 152, 153. & *Crompton's Jurisdiction of Courts*, f. 29. Therefore the Trial of *Irish* Peers by their Peers shall be likewise saved to them within this Act, tho' it be not expressed, as well as the Trial by Peers is to *English* Peers by express Proviso.

I answer, first, That this Rule holds generally true in all Cases of new Treasons and Felonies where the Offences only are made capital, or punishable according to the ancient, usual, and ordinary Proceedings of Law, and the Manner of the Trial of them left at large, and not precisely limited how and by whom they shall be tried; as they are in the objected Cases upon the Statutes of 25 H. 8. c. 6. & 5 Eliz. ch. 17. concerning Buggery; where the Words are, "That this Vice shall be adjudged Felony, and that such Order and Form of Process shall thereupon be used against the Offenders, as in Cases of Felony at the Common Law, and that the Offenders being thereof convicted by Verdict, Confession, or Outlawry, shall suffer Pain of Death, &c." Which Words, without the least Contradiction, stand as well with Trial of Peers who are guilty of it by their Peers alone, as of Commons by a Jury, they being both according to the Order of our Common Law, and a Verdict by Peers is as properly styled a Verdict in Law, as a Verdict by Jury; Witness 1 H. 4. 1. and *Cook's 3 Instit.* ch. 2. p. 30. But in the Statute of 35 H. 8. there is no Creation or Introduction at all of any new Treasons, but only an Introduction of a new Form and Way of Trial for Treasons formerly made and declared such, then done, or hereafter to be committed out of this Realm, and that new Form of Trial precisely limited in all Particulars, and especially enacted to be by an ordinary Jury, except only in case of our *English* Peers: Therefore this Statute comes not at all within the Objection, because it particularly defines the Place where, the Judges before whom, the Juries by whom, with the whole Form and Manner how such foreign Treasons shall be tried, with all other Circumstances of the Trial, and expressly prescribes, That all but *English* Peers indicted for foreign Treasons, shall be tried by good and lawful Men of the Shire where the King's-Bench or Commissioners sit. Therefore to alter this Form of Trial precisely prescribed by this Statute, by introducing a new Trial by *Irish* Peers, is to run quite cross against, elude, and repeal this Statute, as I have argued and proved at large.

\* See *Hov.* p. 545, 546, 550. *Walsingham Hist. Ang.* p. 48 to 56. *Mat. Paris Hist. Ang.* p. 417, 433, 666, 667. 29 E. 1. Rot. Clauf. dorf. 10 Clauf. 33 E. 1. dorf. 13. scedula clauf. 34 E. 1. dorf. 10. clauf. 10 E. 3. dorf. 9. § 1 Jac. c. 2. 3 Jac. c. 3. 4 Jac. 1.

I have now quite done with my Argument of this new untroden Case; and I hope therein sufficiently manifested, that this Plea of the Prisoner is invalid, and such as ought to be over-ruled in Point of Law: And therefore as he hath been sent for over from *Ireland*, by the Wisdom and Justice of our Parliament, and by the Lords, Justices, and Council there transmitted hither, to receive a just and speedy Trial at this Bar for his bloody Treasons, which there (in respect of the Rebels Power, Tumults in that Realm) he could not conveniently undergo; so I humbly pray on the behalf of the King, Kingdom, Parliament, and our whole *English* Nation, to all which he hath been such a capital Traytor and Enemy; That this Plea of his may presently be over-ruled, and himself brought to his speedy Trial, Judgment, and Execution, for his unparalleled Treasons, and the Blood of those many thousands of innocent *English* Protestants shed in *Ireland* upon this Occasion, which cries for Justice and Execution against him without further Delay; the rather, because *nulli differemus Justitiam* is one Clause of that very Act of *Magna Charta*, ch. 29. which he hath pleaded in Bar of his Trial, of which I pray both he and the whole Kingdom may now enjoy the Benefit, by his undelayed Trial and Execution too, in case he shall be found guilty of the Treasons for which he stands indicted; of which there is little Doubt, since so fully confessed by himself in a Writing under his own Hand, and we are ready to make them good against him, as we have already done against his Confederate *Mac-Mahon*, by the Testimony of a Cloud of honourable pregnant Witnesses, in case he shall deny it.

After two Arguments at the Bar on both Sides of this Case, Justice *Bacon* argued it himself, and delivered his Opinion and Judgment against the Prisoner's Plea, That though he be a Baron of *Ireland*, yet he was triable for his Treason by a *Middlesex* Jury in the King's-Bench, and outed of his Peerage, by 35 H. 8. c. 2. Which Judgment was approved by this Order of both Houses of Parliament.

Die Lunæ 10 Februarii, 1644.

*Ordered by the Lords and Commons in Parliament assembled, That the said Houses do approve of the Judgment given by Mr. Justice Bacon, in over-ruling the Plea of the Lord Magwire, and of the Manner of the Trial by the Indictment of High Treason in the King's-Bench: And the Judge is hereby required to proceed Speedily thereupon according to Law and Justice.*

John Brown, Cler. Parl.

Henry Elsing, Cler. Parl. D. C.

Upon which, on Monday Febr. 10, 1644. he was brought from the Tower of London to the King's-Bench Bar, and there arraigned; where putting himself upon his Trial, he challenged twenty three of the Jury, which appeared, peremptorily: Whereupon a *Disfringas* was awarded to the Sheriff of *Middlesex* to return *Quadragesima* tales the next Day; of whom he challenged twelve more peremptorily: And being tried by twelve of the residue returned (against whom he had no legal Exception nor Challenge) he was

upon his own Confessions and pregnant Evidence of fifteen Witnesses (Persons of Quality) found guilty of the Treasons for which he was indicted; and thereupon Febr. 11. was adjudged to be drawn to Tyburn, and there hanged by the Neck, and cut down alive, and then his Bowels to be taken out, and there burnt before his Face, his Head to be cut off, and his Body to be divided into four Quarters, and then to be disposed as the Parliament shall appoint. Which was accordingly executed the 20th of February.

At the End of the Argument Mr. *Prynne* says thus:

To fill up the vacant Pages of this Sheet, I shall annex this one Record, and also one *Irish* Act, being both very pertinent to my Argument.

Pat. 1 E. 1. m. 20. *Hibernia*.

Venerabili in Christo Patri eadem gratia *Mid-den* Episcopo, & dilectis & fidelibus suis *Mauricio* filio *Mauricii*; Justiciario suo *Hibern.* & Magistro *Johanni de Saumsford*, Esceatori suo *Hibern.* salutem. Cum defuncto jam celebris memorie Domino *H.* Rege Patre nostro (cujus animæ propicietur altissimus) ad nos Regni *Angliæ* gubernacul. & terræ *Hibern.* Dominium pertineant; ob quod Prælati, Comites, & Proceres, ac Communitas Regni nostri nobis tanquam Domino suo ligio & Regi fidelitatis Juramentum & omnia alia quæ nobis ratione Coronæ & Dignitatis Regiæ ab ipsis fieri & præstari nobis, in absentia nostra, poterunt plenariè & sine omissione aliqua prompto & libenti animo præstiterint: Ac Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, Milites, libere tenentes, ac tota communitas terræ nostræ *Hiberniæ* nobis tanquam Regi & Domino suo ligio consimile sacramentum fidelitatis præstare teneantur. Dedimus vobis potestatem recipiendi nomine nostro fidelitatem ipsorum. Ita tamen quod si vos omnes interesse nequiveritis, tunc duo vel unus vestrum qui præfens fuerit nichilominus plenariam habeat potestatem recipiendi nomine nostro fidelitatem ipsorum in forma prædicta. Et ideo vobis mandamus, quod fidelitatem prædictam nomine nostro recipiatis, prout melius videbitis expedire. In cujus, &c. Dat. per manum *W. de Merton Canc.* apud *Westm.* VII die Decembris.

33 H. 8. c. 1. made in *Ireland*. \*

An Act that the King and his Successors shall be Kings of *Ireland*.

**F**Orasmuch as the King our most gracious dread Sovereign Lord, and his Grace's most noble Progenitors, Kings of England, have been Lords of this Land of *Ireland*, having all manner of Kingly Jurisdiction, Power, Pre-eminences, and Authority Royal belonging or appertaining to the Royal Estate and Majesty of a King, by the Name of Lord of *Ireland*, where the King's Majesty, and his noble Progenitors, justly and rightfully were, and of right ought to be, Kings of *Ireland*, and so to be reputed, taken, named, and called, and for lack of naming the King's Majesty and his noble

\* The Stat. of *Ireland*, printed at *Dublin* 1621. p. 183.



Progenitors Kings of Ireland, according to their said true and just Title, Stile, and Name, therein hath been great Occasion that the Irishmen and Inhabitants within this Realm of Ireland have not been so obedient to the King's Highness, and his most noble Progenitors, and to their Laws, as they of right and according to their Allegiance and bounden Duties ought to have been. Wherefore, at the humble Pursuit, Petition, and Request of the Lords Spiritual and Temporal, and other the King's loving, faithful, and obedient Subjects of this Land of Ireland, and by their full Assents, he it enacted, ordained, and established by this present Parliament, that the King's Highness, his Heirs, and Successors, Kings of England, be always Kings of this Land of Ireland, and that his Majesty, his Heirs, and Successors, have the Name, Stile, Title, and Honour of King of this Land of Ireland, with all manner of Honours, Preheminences, Prerogatives, Dignities, and other things whatsoever they be, to the Estate and Majesty of a King appertaining and belonging; and that his Majesty, his Heirs, and Successors, be from henceforth named, called, accepted, reputed, and taken to be Kings of the Land of Ireland, to have, hold, and enjoy the said Stile, Title, Majesty, and Honours of the King of Ireland, with all manner of Preheminence, Prerogative, Dignities, and all other the Premises, unto the King's Highness, his Heirs, and Successors for ever, as united and knit to the Imperial Crown of England. And be it further enacted by the Authority aforesaid, That on this side the first Day of July next coming, Proclamation shall be made in all Shires within this Land of Ireland, of the Tenour and Sentences of this Act. And if any Person and Persons, of what Estate, Dignity, or Condition soever they or he be, subject or reliant within this Land of Ireland, after the said first Day of July, by writing or imprinting, or by any exterior Act or Deed, maliciously procure or do, or cause to be procured or done, any thing or things to the Peril of the King's Majesty's most Royal Person, or maliciously give Occasion, by Writing, Deed, Print, or Act, whereby the King's Majesty, his Heirs, or Successors, or any of them, might be disturbed or interrupted of the Crown of this Realm of Ireland, or of the Name, Stile, or Title thereof, or by Writing, Deed, Print, or Act, procure or do, or cause to be procured or done, any thing or things to the Prejudice, Slander, Disturbance, or Derogation of the King's Majesty, his Heirs, or Successors, in, of, or for the Crown of this Realm of Ireland, or in, of,

or for the Name, Title, or Stile thereof, whereby his Majesty, his Heirs, or Successors, or any of them, might be disturbed or interrupted in Body, Name, Stile, or Title of Inheritance, of, in, or to the Crown of this Land of Ireland, or of the Name, Stile, Title, or Dignity of the same; that then every such Person and Persons, of what Estate, Degree, or Condition they be, subject or Reliants within the said Land of Ireland, and their Aiders, Counsellors, Maintainers, and Abettors therein, and every of them, for every such Offence, shall be adjudged High Traitors, and every such Offence shall be adjudged and deemed High Treason, and the Offenders, their Aiders, Counsellors, Maintainers, and Abettors therein, and every of them, being lawfully convicted of any such Offence, by Presentment, Verdict, Confession, or Proofs, according to the Customs and Laws of this said Land of Ireland, shall suffer Pains of Death, as in Cases of High Treason, and also shall lose and forfeit unto the King's Highness, and to his Heirs, Kings of this Realm of Ireland, all such his Manors, Lands, Tenements, Rents, Reversions, Annuities, and Hereditaments, which they had in Possession as Owner, and were sole seized of in their own Right, of, by, or in any Title or Means, or in any other Person or Persons had to their Use of any Estate of Inheritance at the Day of any such Treason and Offences by them committed and done. And that also every such Offender shall lose and forfeit to the King's Highness, and to his said Heirs, as well all such Estates of Freehold, and Interest for Years, of Lands and Rents, as all the Goods, Chattels, and Debts, which they or any of them had at the time of their Conviction or Attainder, of or for any such Offence; saving alway to every Person and Persons, and Bodies Politick, their Heirs, Successors, and Assigns, and to every of them, other than such Persons as shall be so convicted or attainted, their Heirs and Successors, and all other claiming to their Use, all such Right, Title, Use, Interest, Possession, Condition, Rents, Fees, Offices, Annuities, Commons, and Profits, which they or any of them shall happen to have, in, to, or upon any such Manors, Lands, Tenements, Rents, Reversions, Services, Annuities, and Hereditaments, which so shall happen to be lost and forfeited, by reason and occasion of any of the Treasons or Offences above rehearsed, any time before the said Treasons or Offences committed or done.

NUMBER

## NUMBER VI.

*The Dying Speech of Mr. Peter Vowell, \* executed July 10, 1654.*

Gentlemen,

**A**T this earthly Bar, from them that pretend to have a great Measure of Sanctity, I had hard Measure: But to that Bar I am now going, the Bar of Heaven, where I shall have Justice; yea, one Day Justice against them, except they water their Beds and Couches with Tears of Repentance.

The Court gave severe and rash Judgment on my Body; and sent a pitiful Fellow (but pitiless) that gave as rash a Judgment on my Soul: But that precious Jewel none of them could touch to hurt. The Souls under the Altar cried for Vengeance, loud, long ago: How many more of late Years have been added to them to help the Cry! The Cry is loud of those lately, whose Blood hath been unlawfully spilt. But Vengeance is God's, and I will leave it to him.

The Court at my Trial said I was confident, and held it as a Fault: He also whom they sent to the *Tower* (I know not if to intrap me) under pretence to comfort my Soul, told me also I was confident. I say the same; and the same Confidence bring with me now; and by God's Assistance, I hope, shall carry it out of this World with my Innocence.

*Gentlemen Soldiers,* Amongst the ancient and most savage sort of Heathen they had a Law, once every three, six, or twelve Months, to offer up a Sacrifice of human Blood to their God; and that their God was a Devil. Amongst us, whether Heathen or not you best know, of late Years, we have had a fatal Custom, once in three, six, or twelve Months, to make not only a Sacrifice, but many Sacrifices of human Christian Blood: Our Scaffolds have reeked and smoaked with the choicest sort of Blood; but unto what God, do you judge. What God is he that delights in the Blood of a Man? *Baal*, the God of *Ekron*, *Beelzebub*, the God of Flies.

Amongst the Primitive Christians, that lived nearest the Time of our Saviour Christ, the greatest Tyrants and Persecutors of the Christians lived. The Persecution was great; and yet the Courage of those persecuted Christians was so great, that it excelled the Fury of the Persecutors; that they came in faster to be killed, than they could kill: They offered their Bodies and Throats so thick unto the Slaughter, that the Hands of the Tyrants were weary with killing. And yet *Sanguis Martyrum* was *Semen Ecclesie*: And many Heathens came in with the Christians, and died Christians, and died with them; the Christians still increased the more.

Of late Years there hath been a great Persecution in this Nation; and yet the Sufferers have been so many, and presented themselves so thick, in the Vindication of their King, Country, and Laws, that they startled the very Enemy himself; their Constancy so great, that the Eyes of their Judges dropt Tears; whether real or true, let the Judge of Judges judge: They still stand amazed at their Constancy, though they exceed the old Heathens, are not weary of killing.

Oh Soldiers! how many of you have been brought up and led on by blind Principles, wronged in your Education, or seduced by your indiscreet, heedless, and heady Teachers? How many of you, young, have for some small Discontent departed from your loving Masters, dear Friends, or tender Parents, and fled into the Army? How many of you, driven by tyrannous Oppression, Poverty, or Cruelty, have left your dear Wives and Children? And some for Novelty or Wantonness adhered to this Employment, not considering the great Danger of spilling innocent Blood. How many of you have drawn your Swords, you do not know for what? How many of you keep drawn your Swords, you do not know for what?

You have put to death a pious and just King; and in his stead have reared up even another *Jeroboam*, that makes *Israel* to sin: What his Goodness is, you best know.

You have put down a good old Law, and raised up another of your own to judge the People by. For my calling for the Benefit of the former, and for the Equity even of your own Law, I am in part condemned here to die. Be you Judge of the Proceedings.

How many of you have had a hand in putting down the ancient true Church, and raised up in your own Imaginations a new one? But, alas! you know not what you do: If you did, you would grieve to see what a glorious Church you have ruined; you would never have pulled up the Hedges, and broken down the Fences, that the wild Beasts of the Forests should come in; that the little Foxes should devour, and the wild Boar root out, so stately a Vine.

When the *Jews* were led into Captivity, their goodly and magnificent Temple was burnt: But in process of Time they obtained Favour amongst the Heathen Kings they dwelt amongst, and had Liberty wherewith to rebuild. Rebuild they did, and finished a Second Temple; at which Sight all the young Men rejoiced, to see so gallant a Temple; but the old Men wept, to see how far different and short the Second Temple

\* From the MS. of Dr. Richard Drake, late Chancellor of Sarum. — This Speech should follow his Trial, in Vol. 2. P. 212 to 217.



was from the Glory of the First. So you, young Men, rejoice at your imaginary Church; but the old Men, methinks I see some weep. Oh! weep not for me; weep for your Country; weep to see Religion, Liberty, and Laws taken from you; weep to see so many good Men snatched away, but indeed from the Miseries to come; and weep for what Miseries your unhappy selves will suffer.

*Soldiers*, However you flourish for a time, and perhaps many of you may rejoice at our Deaths, believe it, as *Samson* pulled the House of the *Philistines* down, when he fell; so shall we give you and your Cause a greater Blow by our Deaths, than living we possibly could have done. You may for a time flourish; but remember what our Saviour said, All you that make use of the Sword, shall perish by the Sword. You shall be cut down like the Grass, and wither away like the green Herbs.

But do you behold yonder glorious Place? Do you behold the spangled Heavens, where the holy Angels dwell, where God himself is surrounded with Thrones, Principalities, Powers, and the celestial Spirits of just Men? When the

Trump shall blow, when the Dead shall rise at the dreadful Day of Judgment, how will you answer all your Rapes and Murthers? Do you think that your Hands, which have been bathed in the Blood of your King, the Blood of so many of your eminent Countrymen, so unjustly; that have been bathed in the Blood of many of your Friends, your Kindred, perhaps your Parents, can ever reach yonder glorious Place, without Repentance? Oh! no. Repent now, therefore; it is not too late: Shake off your bloody Protector; rescue your ancient Laws; and call in your Royal young Prince, whom you have long enough wronged. Make your Addresses to the great Protector of Heaven and Earth; and desire him, as I now do for my self, for a Pardon, for a Pardon for all your former and present Transgressions.

I die an obedient Son of the Church of *England*, and with a dutiful Heart to the King; and desire that none present that loves them would be disheartened by my Death, but continue faithful to the End.

And so farewell. I forgive all the World.



## NUMBER VII.

*A true and impartial Relation of the Death (and Dying Speech) of Mr. John Gerard, who was beheaded on Tower-Hill, July 10, 1654.\**

*[Published by his Friends.]*

**I**T was thought needless by the Friends of Mr. Gerard, to declare any thing concerning his Sufferings to the World more than in their Sighs, had not the sacrilegious Malice of the last weekly Pamphlet thrown some Stains upon his Name, and so incensed them to a Vindication as pious as his Death was. 'Tis most certain, that there can no Blots stick upon true Honour, which such weak Felons endeavour against it: These are cursed Beasts, but their Horns are short; sepulchral Dogs! that scrape up Graves, and violate the Dead, and are fierce and ravenous; but yet Dogs still. And all worthy People will call their Railing, Praise, and what they intend a barking Infamy, the greatest Merit. Yet because every Understanding is not of the same Brightness, and those putrid Libels may, by ill chance, fall into some innocent Hand hereafter (and yet sure such Vermin should not be endured long) therefore let wise and good Men pardon him that hath undertaken this Justice for that Gentleman, and be pleased to read this sad Story, not for their Satisfaction sake, but their Sorrows: It may dry up a friendly Tear, perhaps, and still a murmuring Groan, to see the comely Posture of his Passion, how well all was carried by him, and how honourably, and the

honest Circumstances may not improbably take off from the Sadness. Why should I grieve that Death, which had such a living Glory in it? or dishonour that Blood with feeble Tears, which was shed so like the holy Martyrs? All that knew this Person, cannot but witness his general Resolution, and whether his great Courage fell less, than it self (as that Viper hisseth) or did not rather rise greater now, when the Christian was twitted with the Gentleman, let this faithful Relation witness: In which, though all Terms and Syllables may not be exactly the same, yet if there be a material Falshood, or a wilful Flattery, may his Neck that wrote it feel a viler Destiny than Axes are, or Halters. *Amicus Gerardus, sed magis Amica Veritas.*

From the first Day of his Imprisonment he foresaw the heavy Sentence hovering upon him, and therefore gave all Diligence to secure himself against it; that however he underwent a temporal Condemnation, he might escape an eternal. But after that sad Doom was pronounced, then he bestirred himself again, and made double Haste for Heaven: It was for his Life, and therefore he would lose no Minute, but the same Night gave Directions to a dear Friend for a Minister (whom he knew to have long honoured his

\* This Relation and Speech should follow his Trial, Vol. 2. P. 212 to 217.

Family) to be brought to him early next Morning; and it pleased Authority to gratify him in this great Desire, so that an Order was sent freely for the quiet Admission of any such Person to him. With this spiritual Friend he spent some Hours every Day in Prayer, and other ghostly Refreshments; which (God be praised) were not without sweet Effect and Impressions upon his Soul. There were some other Ministers (Mr. Bond and Mr. Caryl) of great Observation for Gravity and Godliness in these Times, who visited him, and who I am confident will put their Seal to this Truth with me, that they found him meek, humble, modest, penitent, comforted, and not far from the Kingdom of God, if not already in it; but I have good Hope he was in Possession, and so had he, through Grace. Upon the Morning (which was the last he must see until that of the Resurrection) he submitted to some wholesome Orders of the Church, and received her Comforts by them. That done, he proceeded to (the highest Enjoyment of Grace that can be administered upon Earth) the holy Communion, whereof with his Brother Sir Gilbert Gerard he was a Partaker, with as much Reverence, Zeal, Thankfulness, holy Sorrows, and holy Joys, as a devout Soul could evidence: He wept as if he would have washed his Saviour's Wounds, which his Faith presented, in his Tears; and yet he said he was admirably ravished with all inward Peace and Comfort in his own Conscience. This passed; he had now nothing to do but to die, which he expected that Morning very speedily: But by the Pleasure of Authority both the Time and the Place of his Execution were altered; so that he was to wait a little longer until Evening, for his Release. Many Friends and Persons of Honour came to take their last Leave of him, who can gladly witness his Undisturbedness and civil Cheerfulness to every one of them. His Brother tarried continually with him, and they eat together; and though some Eruptions of Passion could not be restrained now and then, where Nature was so much concerned, yet they were generally pleasant; and at last parted (about half an Hour before he was led forth to Death) with as much Calmness and Placidness, as if they had been to meet again anon safe and unhurt, as they had done formerly. So have I seen a windy and stormy Day conclude in Stillness and Sun-shine, as if weary, and desiring to rest without any Breath of Trouble. The Minister only waited on him to the last; and about Five o'Clock enters the Lieutenant of the Tower, and the Sheriff of London; (two sure Friends, that will not leave him, as long as he hath Life remaining in him :) They told him a sour Message, That they were come to conduct him to his Death's Blow. He replied, They were very welcome; and received them so fearless and untroubled, that the Sheriff told the Minister, He was sorry to see him so unfit for that Condition; but (under Favour) he mistook his Condition: That which he accounted Fitness to die, our Pamphlet-monger would have call'd Flagging and Cowardice. So hard a Thing it is to satisfy all Curiosities, even with our Blood, and nothing more ingenious than to carry this bitter Cup even, when so many Misconstructions shake it. At his Lodging, he desired the Sheriff that he would permit the Minister, and three others that were his Friends and Servants, to go

upon the Scaffold with him; which, as it was a seasonable Wisdom in him to desire, so was it a fortunate Kindness from them that granted it, else it may be their Testimony might have been wanting to his injured Reputation. He took Leave particularly of the Household, where he was a Prisoner, and was so clearly collected in every thing he did, that he went out of his Way into the Kitchen, to bid his Landlady farewell, giving Thanks for her Respects during his Bonds, which he said he should die in to her. As he pass'd by the Guards in the Tower, he gave them Money twice, and told them, he should trouble them no longer, being on his Remove to better Guards. He walk'd along to the Scaffold on Tower-Hill, shewing a great deal both of Humility and Respect to the People, who generally lamented him, and pray'd for him. As he went, he was bare-headed for the most part, carrying his Hat in his Hand, and sometimes resting it in a careless Bravery on his Left Side. When he came to (or rather leap'd upon) the Scaffold, (for he was so far from flagging when about to tread that tragical Stage, that many observed how sprightly he seem'd to skip up the Steps to it, as if he had gone to dance there, rather than to die) his grim Executioner presented himself to him, to whom, with a cheerful Smile, he said, *Welcome, honest Friend*; and desiring to see his Ax, he took it into his Hands, and kissing it, with a pretty Glance of his Eye (which was a natural Loveliness in him) towards the Minister, he said, *This will do the Deed, I warrant it*. The Scaffold was very much crowded with People, yet, as well as he could, he made some Turns to and fro upon it, with a Paper, (which he had taken out of his Pocket) in his Hand, wherein, it seems, he had prepared some Heads of a Speech, which he intended to have deliver'd; but the Sheriff and Lieutenant told him, if he spoke any thing, it must be very brief, and that they must not suffer him to speak any thing that was seditious; *Well, Gentlemen*, (said he) *your Will be done*; but, *God be praised, I never yet had to do with any thing that was seditious! I would fain have spoken something to clear myself to the World, according to the Custom, if it might have been: But come, Sir*, (says he, turning to the Minister) *let you and I speak to him that will give us Leave*; and so kneeling down together in a Corner of the Stage, the Minister pray'd with him a short Time; which done, they stood up again: Then turning himself to the People, and putting off his Hat, he told them, That he was not permitted to speak a few Words, according to his Intention, yet he doubted not but what he would have said would come to their Eyes, though it must not come to their Ears; *But this I desire all to take Notice of*, (and this he spoke with a double Vehemence) *that I die a faithful Subject and Servant to King Charles the Second, whom I pray God to bless, and restore to his Rights; and had I Ten Thousand Thousand Lives, I would gladly lay them all down thus for his Service*. Here he was interrupted, and the Sheriff wish'd him rather to confess what he knew concerning the horrid Plot he was condemn'd for; he answer'd, That he had confess'd all that he knew concerning any Plot; that he thought they knew more of the Plot that condemn'd him, than he did; but he heartily forgave them. The Minister told him, it was well done to forgive and pardon



pardon those that persecute us, that was an Act of true Christian Love, but, as his Case stood, Love was not enough; he ought to deal in this Business (upon which his Life lay) with all Candour and Sincerity, not concealing any Thing of that Nature, as was charged against him, as far as he might glorify God, and serve the Publick Good. Upon which, lifting up his Eyes towards Heaven, and laying his Hand upon his Breast, *Oh! Sir, says he, if there had been any such Thing in this Breast, would I not have reveal'd it before this Time? I protest, in the Sight of Almighty God, I know no more of any such Design, but only what I have often acknowledged, that it was motion'd to me by Henshaw, (who, I confidently believe, is in their Hands,) and debated twice or thrice, when I was with him; but I never entertain'd it at all, and at the last flatly disown'd it, and told him, I would have nothing to do in it. He was many Times pressing me to nominate what Persons I knew I could bring, and to have their Names; but let them show any such Thing, if they can, against me: But I am certain he is in their Hands.* Pausing here a little, and fetching a Turn or two on the Scaffold, being very hot, (as he had been all that Morning) he call'd for some Small-beer, which he had given Order to be ready, and was brought thither in a stone Bottle, of which he drank a little once or twice. Then the Minister went to him, and minded him, that something might be expected from him, as to his Religion, and Disposition to die: To which (gathering up an extraordinary Resolution in his Face,) he replied, *I die a Christian, a true Christian, according to that Faith and Religion, which was profess'd by the Church of England, in the Time of our late King, of blessed Memory. And I praise God, I am so fitted and ready to die, that I am confident, by the Merits of Christ Jesus, that my Sins are pardon'd, and my Salvation is at Hand.* Then turning about, he call'd for his Waistcoat and Cap, and throwing off his Doublet, put them on, whilst his Servants help'd to put up his Hair. His Waistcoat was not very clean, which he took Notice of to his Man: *But 'tis no great Matter, said he, if the Heart be clean, all's well enough.* Being thus prepared, he calls for the Block, and viewing it, (as with Delight) laid himself down upon it, to see how it would fit, and was so far from sinking at the Sight of it, that he almost play'd with it; and rising quickly, pulls a little Prayer-Book out of his Pocket, which he gave to the Minister, willing him to find that particular Prayer which was proper for that Occasion, but the Crowd being great, he could not quickly find it, so that he kneel'd down with the Book open awhile in his Hand, as if he had read, but quickly shut it, and pray'd with great Expressions of Fervency by himself. When he had done, the Lieutenant said something to him (as it seems) concerning his Brother Charles, that had witness'd against him; I know not what the Lieutenant said, (for he spake low) but Mr. Gerard spake aloud, and reply'd passionately, *Oh! Christ, Sir! I love my poor Brother with all my Heart! he is but a Youth, and was terrify'd; I know how he was dealt with; tell him, I love him as well as ever I loved him in my Life: And commend me to my Brother Sir Gilbert, whose Release I beseech you, Sir, to assist; there being no more Cause, that I*

*know of, for his Imprisonment, than only that he was found in the same Bed with me, which, sure, is no capital Crime.* Having said this, he took his Leave with him, and the Sheriff, and all he knew on the Stage; and turning about once more to the People, desired them to pray for him, himself kneeling down with the Minister, laid his Head in his Bosom, and they pray'd together the last Time. After this, he bid them all farewell again, and besought them to remember they had a poor Sovereign abroad, who deserved to be remember'd. Then forgiving the Executioner, and saluting the Minister with his last Embrace and Kisses, he bow'd himself to the Stroke of Death, with as much Christian Meekness and noble Courage mix'd together, as I believe was ever seen in any that had bled upon that Altar: And this all the People, that were Spectators, did seem to understand and acknowledge; beholding his fatal Blow with a universal Sadness and Silence; whereas, when the other Gentleman fell quickly after, upon another Score of Blood and Riot, they gave a great and general Shout, as applauding the Justice of the Portugal's Death; \* but pitying and bewailing the untimely Fall of so brave and magnanimous a Spirit, as did (through all the Clouds of Death) shine gloriously in this unfortunate Gentleman.

#### His SPEECH.

Gentlemen,

**A**S this Kind of Spectacle is no new Entertainment to your Eyes, for you have had a late Glut of such Objects, so is it no strange Thing to me to be made such a Spectacle; for I have been bred upon the Theatre of Death, and have learn'd that Part so well, though, I confess, a very hard one, as to perform it pretty handsomely, both as becomes a Gentleman and a Christian.

Only I must desire you to expect no fine Prologue, or Speech, from me; I never studied to make Orations: A very unfit Man to lay Plots against a State, who am scarce able to lay a few Lines of plain English together, as I ought; but though I cannot speak happily, I doubt not but I shall die happily.

I confess myself a great Sinner; Who is innocent? God be merciful to me a miserable Sinner. I adore the Justice of God in all this that is come upon me: I have deserved to die long since, and blessed be God, who hath given me such Time to prepare; but for this Crime I stand condemn'd for to Day, I do protest mine own Innocency, as to any Consent or Engagement to act in it.

I hope you will believe me, when you consider upon what slender Proofs and Testimonies I suffer; none of them legal, or positive, but circumstantial.

For my Brother Charles, alas! poor Youth! how he was wrought upon! But I desire all my Friends to think honourably of him.

For my Brother Sir Gilbert, this Imagination of a Plot is said to have been hatch'd in France, but I fear the Nest was at Whitehall.

As for the King, so far from concurring to such a Deed, that I am only unsatisfy'd in this, whether I shall die right in his Favour,

\* Don Pontaleon Sa, Brother to the Portugal Ambassador, who was convicted July the 6th, with others of Murder, (in the New Exchange) by a Jury of six Aliens, and six Denizens, was brought to the Scaffold, and executed with Mr. Gerard.

“ because

“ because suspected of any thing so unworthy of him.

“ I fear he lost his Kingdom by such Practices ; but whether he would recover them so, is a Question : God hath better Ways, when it shall be good in his Sight to plead his Cause.

“ I was lately in *France*, but on mine own Score ; for I have commanded there, and probably might again.

“ For my past Life, it hath been but a troublesome one, but now I hope I shall rest ! Since I was any thing, I have served the King, as I was bound ; and I wish all that did so, had done it as faithfully : He was condemn'd for a Tyrant, but God —

“ For my Religion, though a Soldier, I am able to profess I am a Christian Soldier, a true Son of the Church of *England*, as constituted under Queen *Elizabeth*, King *James*, and King *Charles*, of blessed Memory : Her Doctrine and Government I embrace, her Truth and Peace I pray God to restore.

“ I humbly give Thanks to God Almighty, for providing me the Comfort of a Minister, on whose Fidelity I might repose my Soul.

“ And I pray God to bless the poor faithful Ministers of this Church, and give you Hearts

“ to esteem them ; the Want whereof is no small Cause of our Misery.

“ My Days have been few and evil, yet, God be blessed, in all the Vanities and Folly of Youth, I have been far from Atheism, or Contempt of God's Worship ; I had always awful Impressions of God's Honour and Service, which is now my Comfort.

“ And now, dear Countrymen, fare you well ; I pray God bless you all, and this whole Nation.

“ Alas, poor *England* ! When will these black Days be over ! When will there be Blood enough ! I wish mine may fill up the Measure. — I forgive all.

“ Once more, fare you well : Commend me to all my Friends, pray for me.

“ I pray God make you as faithful and loyal as I have lived, and as happy as I shall be by and by, when I am dead.

“ Come, Lord Jesus ! come quickly !

“ Father of Mercies, have Mercy on me !

“ Saviour of the World, save my Soul !

“ O Lamb of God, that takes away the Sins of the World, hear my Prayers !

“ Into thy Hands, O Lord, I commend my Spirit !

“ Lord Jesus ! receive my Soul !



# N U M B E R VIII.

*The Trials, Behaviour, and Dying Speeches of Col. Okey, Col. Barkstead, and Miles Corbet, Esq; April, 1662. \**

[ *Publish'd by their Friends.* ]

Colonel Okey, Colonel Barkstead, and Miles Corbet, Esquire, being involved in one and the same Danger, did, since the King's coming in, ship themselves for *Holland*, after many great Difficulties and Hazards. Two of them, viz. Col. Barkstead, and Col. Okey, after a short Stay in *Holland*, travell'd up higher into the Country, and at length settled themselves at a Town call'd *Hana*, in High *Germany*, where, by their good Carriage and obliging Conversation, they obtain'd the Favour and Privilege to be enroll'd Free Burghers of the said Town. They continued there for many Months, in good Esteem with the Inhabitants, and with great Endearment of Affections to each other. Some urgent Occasions inviting Col. Barkstead to return for *Holland*, Col. Okey, out of meer Kindness and Respect to his Friend, resolves to accompany him, and so both of them took their first Convenience for *Holland* ; having before received Encouragement to undertake the Voyage, from a Friend, whom they had employ'd to solicit the States General, that they might abide for a short Time within their Jurisdiction, unmolested ; to which,

as their Friend inform'd them, they did most freely and willingly condescend. Another also was more particularly engaged by Col. Okey, to acquaint Sir George Downing (the King's Resident now in *Holland*;) with their Intentions of coming speedily into that Country, in case they might, for a few Days, remain there in Safety, and that he had no Order from the King his Master to seize them : Sir George did assure that Gentleman, that he had no Order from the King to apprehend, or molest them, but that they might be as free and safe there as himself. Upon this last Encouragement they did very much depend, Col. Okey especially being confident that Sir George Downing had a particular Kindness for him, who gave him his first Bread in *England*. This generous and plain-hearted Colonel (who took a Measure of all Men by himself) did, without the least Hesitation, repose a great deal of Trust and Confidence in one whom he had been instrumental to raise from the Dust. They had not been long in *Holland*, before their Occasions call'd them to *Delft*, whereof the forementioned Knight had timely Notice by one of his

\* This should follow the Trials and Speeches of the Regicides, Vol. 2. p. 413.



Spies employ'd for that Purpose, and having in Readiness a Warrant from the States General for the seizing of them, the Knight, and his ruffianly Crew, without the least Sense of Humanity or Honour, having certain Knowledge of their Arrival at *Delft*, did, the very same Night, proceed upon their Design, and took them at their Lodging, together with Mr. *Corbet*, who, upon Notice had that they were in Town, went only to give them a Visit, and it being late, was even ready to take his Leave of them. When they were all three thus seized, immediately they were hurried to Prison, and by the Procurement of Sir *George Downing*, were most barbarously used, having Shackles and Fetters put upon them, and so cast into a nasty, moist, and dark Dungeon, having nothing else but the damp Earth to repose upon, and there continued all Night, 'till Two of the Clock the next Day, in a very sad Condition; but afterwards, being treated a little more like Men, some of the States came to them into the Prison, bringing one of their chief Ministers with them, and between examining of them, and discoursing with them concerning the Fact for which they were seized, and the Cause in which they were formerly engaged in *England*, wherein Col. *Barkstead* especially gave them such Satisfaction, that all of them, and particularly the Minister, when they took their Leaves of them, seem'd to have a better Opinion both of their Persons and their Cause, than they had before; and did withal give them Assurance, that they should not be deliver'd up, to be sent for *England*, until they had had a more publick Hearing of what they could say in their own Defence. But by the extreme Officiousness of Sir *George Downing*, and his continued Solicitations, accompanied (as is reported) with strange Menaces, these Persons were soon after, (not only contrary to the particular Engagements of the Lords before-mention'd, but also against the very Laws of Nations, and of all human Society and Commerce, yea, against their own former Practice, in the Case of *Ravilliac*, who murder'd the King of *France*,) by Order from the States General, at Two of the Clock in the Morning, taken out of Prison, and being manacled with Wrist-Irons, Chains, and Locks, were thrust into a Vessel lying at *Delft*, and from thence convey'd into one of the King of *England's* Frigats, provided for the Purpose, and so, in a few Days, were brought for *England*. When they arrived at the *Tower* of *London*, they were forthwith disposed of, by Order of the Lieutenant, to their several Prison-Lodgings, and there continued until the Sixteenth of *April*, 1662, upon which Day they were carried up by Water to the King's-Bench Bar, to receive Judgment, having been already, by Act of Parliament, attainted of High-Treason, for compassing the Death of the late King *Charles* the First. After a very short Dispute, whether the Prisoners at the Bar were the Persons named in the foremention'd Act of Attainder, yea or no? Witnesses being produced, who made full Proof in the Affirmative, and the Prisoners themselves confessing it, the Jury, without going from the Bar, gave in their Verdict, that they were the Persons named in the said Act, whereupon Judgment was given against them accordingly. After Sentence was given, they were remanded back to the *Tower*.

## Colonel BARKSTEAD'S Behaviour.

THE Morning of his Execution being far spent in discoursing with his Friends, the Sledge, about Eight of the Clock, came into the *Tower*, which making a great Noise upon the Stones, he ran to the Window with a smiling Countenance, to view them; and said, *Ob! our Chariots are now come!* A little while after the Sledge came, the Gentleman Porter; or some other Officer in the *Tower*, came to acquaint him with it, desiring him to prepare for his Departure; to which he rejoicingly answer'd, That blessed be God, it was not then to do; and so, with much Chearfulness, he committed his Wife into the Hands of the Lord God Almighty, resting upon his Promise, That he will be a Father to the Fatherless, and a Husband to the Widow. A little before his Departure, he desired his Wife to button on his Cloak, which accordingly she did, and presently the Gentleman-Jailor, and a File of Soldiers, came, by the Lieutenant's Order, and received him; at which Time he parted with his Wife and Relations, as himself profess'd, with as much Joy as ever he received them. Now being brought by the Jailor to the Lieutenant's Door, that being the Place appointed for the Sledge to receive them; and although it was the Place and House in which he lived in Plenty and Honour, yet he had so much estranged himself unto it, that he did not so much as cast his Eye upon it; and no Wonder, if his Treasure were in Heaven, that his Heart was there also. He was appointed the first that should enter the Sledge, and so to be drawn the foremost of the three through the City. Having thus enter'd the Sledge, he sat down, and looking about him with a chearful Countenance, and speaking comfortable Words to such Friends as were near him, after a while, the Sledges were order'd to be drawn away, which accordingly was perform'd; and coming down the *Church-Hill*, opposite to his Prison, (*alias* his Palace,) his Wife, with some other Friends, standing at the Window, took her Handkerchief out of her Pocket, and shook it at him, which he perceiving, took off his Hat, and several Times shaking it over his Head, cried out with an astonishing Chearfulness, *To Heaven, to Heaven, to Heaven, my Love, and leave you in the Storm.* Thus passing along, he came to the *Tower* Gate, where some reviled him in Words and Carriages, not only his Enemies, but his former intimate Friends, which he rather smiled than was troubled at. Near *Holborn* there came a young Woman to him, being very earnest to speak to him, which the Officers permitted; all that she told him she had to say to him was this, That whatsoever he did, she begg'd of him to go on chearfully in so glorious a Cause. Several spake to him in the same manner: And though he met with some Revilers in the Way, yet the Number of his Friends, and of such as blessed him, and the rest, in the Name of the Lord, far exceeded them. As he pass'd along, several Times, a Friend that accompanied him, ask'd him how he did? who told him, He was never better in all his Life, and that he grew stronger and stronger every Moment. And going up *Holborn*, being in Discourse with the same Friend, he, with a smiling Countenance, told him, That he evidently saw Jesus Christ coming down the

the Hill to receive and embrace him; and that this Hour's Difficulty, that he was now to go through, was not to be mention'd with that Glory he was to enjoy. When he came near the Place of Execution, the Multitude of People encircling, they could not bring the Sledge near the Gallows, so the Sheriff order'd that he should be brought on foot, which accordingly was perform'd, and a Cart standing ready under the Gallows, he chearfully got into it; before which, some of his Friends took their Leave of him, he leaving this Word of Counsel with them, To trust in that God; that hath promised never to leave nor forsake those that trust in him.

Being enter'd the Cart, the Executioner tied his Hands with black Ribbons, taking off his Perriwig, and putting on his Cap, the Sheriff told him, that he would permit him to say any thing between God and himself, but nothing in Justification of the Act: But he refused to say any thing 'till Col. Okey came, which was immediately after.

Several reviled him at the Place of Execution; among the rest, the Lord —, bidding him (in a scoffing way) *Good-buoy, Barkstead, Good-buoy*; to which, with a Smile, he return'd this Answer, *Sir, you are no Gentleman, to triumph over a dying Man.*

Another Thing observable was, that a Courtier, by way of Derision, told him, *O Barkstead! you have got the Comforter*, (meaning a little Strong-water Bottle, that he had in his Hand;) to which he replied, That, blessed be God, he had a better Comforter than that, or else he should not be able to stand there so chearfully as he did.

To conclude, all his Carriages and Actions were exceeding chearful, going through those Difficulties he met with, with an undaunted Resolution, to the Admiration and Astonishment of his Enemies, and the great Rejoicing of his Friends, who had before earnestly besought the Lord to vouchsafe his comforting and assisting Presence to him.

Colonel JOHN OKEY's Behaviour.

ON Wednesday the 16th of April, 1662, being the Day that Col. Barkstead, Col. Okey, and Mr. Corbet, had Sentence pass'd upon them at the King's-Bench Bar, after which, a Friend went to visit Col. Okey, and found him in a sweet and blessed Frame of Spirit, and very chearful, not in the least under any Discouragement, but acquainted the said Friend, that they had been up at Westminster, and that Sentence was given against them; and declared he was not in the least disquieted at it, but thankfully own'd the Providence of God, in bringing them from the Place where they were beyond Sea, to their present Condition, wherein he profess'd himself to be much satisfy'd, and declared, he had rather lay down his Life here, than to have been buried in another Nation; and express'd further, That for what he was charged withal, and condemn'd, he had not the least Trouble upon his Spirit. He also told this Friend, That he desired to bless God for the Prayers of the Lord's People, for he found the Benefit and Advantage of them in this Time of his Trial: And with much Chearfulness of Spirit, afterwards he did bless the Lord for his Goodness to him, declaring he had got

more Benefit and Advantage in the Time of these his Troubles, than in many Years before; and one Day especially, since his coming into the Tower, he said, He was reading some Verses in the xvth Chapter of *John*, and the Lord did so set home upon his Spirit, ver. 26, 27, especially that Word, *The Father himself loveth you*, that he was so much refresh'd in his Soul, that for an Hour together, he was, as it were, ravish'd with the Joy of the Lord; the Sight of which was much Comfort to his dear Wife, and did much refresh and cheer her Spirit.

And upon Friday, the Day before his Suffering, several Friends went unto him about One of the Clock, and were with him some Hours; he several Times spake to them, saying, *Well, Friends, I shall now get to Heaven before you, and shall go out of a sinful evil World, into that Place where I shall sin no more, nor sorrow any more; I bless the Lord, he is good to me in all his Dispensations, and I could not have been without any of these Afflictions.* Then he mention'd divers choice Places of Scripture, as 2 Cor. iv. 8, 9, and the 17th Verse, explaining the Words to sweet Advantage: *As for Afflictions*, said he, *they are but slight and momentary, and that they work to Glory, yea, an exceeding, yea, a far more exceeding and eternal Weight of Glory:* And much strengthening himself with the Promises of God, *Isa. xliii. 1, 2*, upon which Scripture he did thus descant: *Though Jacob was but a Worm, and so troden upon by every one, yet the Lord would be with him, and so with all his Saints and People in their Sufferings.* He insist'd also upon that Scripture, *Heb. xiii. 5, 6.* together with many others, which were proper to his Condition, and the Lord was pleased to make every one of them a strengthening Cordial to him.

The Day of Execution, several Friends went to Col. Okey, by Six of the Clock in the Morning, where they found him ready dress'd, and with a sweet chearful Spirit bid them welcome. They ask'd him how he did; he said, Never better in his Life, and had found the Benefit of Prayers, and it had been a sweet Night unto him, being sweetly refresh'd, which also did much appear by his chearful and fresh Countenance; for it was observed, that he never look'd better in all his Days. He declared he had much Quietness in his Spirit, and said, As for the Loss of his Estate, it did not in the least trouble him: Then a Friend hinted to him, the parting with his Wife and Relations; he answer'd, She had been a very tender Wife to him, and had express'd her abundant Love and Tenderness in this his Distress; but he was not in the least troubled at their parting, being assured the Lord would be better to her than he could be; and also said, that though his Wife had lost much since she knew him, as to outwards, yet she had gain'd much, as to the better Concernments, (for so his Wife had declared unto him) which doubtless, well consider'd, will out-weigh all other Losses. Some of these Friends spent some Time in Prayer with him, also the Colonel himself went to Prayer, and the Lord appear'd very much in carrying forth his Spirit to own his Hand, and to see his Goodness in all his Dispensations, and to implore further Assistance: And between the Times of Prayer, they had much sweet Conference with him, in all which he manifested a very gracious and holy Frame of Spirit, and often declared, with



with great Cheerfulness, that he was ready to be offered up. He was heard often to ask, Whether his Chariot was yet come or no? and some Friends told him, *Well, now the Time draws nigh; who answer'd, I am ready, I am ready.* Then came the Order for his going to the Sledge, upon which he went with all Cheerfulness, and so went forward with undaunted Courage, to meet Death in the Face, like a Christian Soldier indeed; who, through the Lord's Assistance, presently obtain'd more than a Conquest over all his Enemies.

As he was in the Sledge, and drew near to the Place of Execution, a Friend came to him, and said, *Sir, I have a great Desire to know how it is with you, and how the Lord is pleased to manifest himself unto you, in the Condition you are now in.* The Colonel replied, *Friend, I thank you, I bless the Lord I have great Cause to praise and magnify his great and glorious Name, for his unspeakable Goodness towards me, especially in this present Dispensation; for I can truly say, and that by Experience, that the Goodness of the Lord endures for ever; and praised be God for this present Trial.* The same Friend further replied, and said, *I pray, Sir, are you not at all dejected in your Spirits? Are you not cast down in your Mind? Have you not hard Thoughts of God for this his strange Providence towards you?* The Colonel replied, *Friend, I shall endeavour to satisfy you as well as I can in this Matter; and I let you know, that I have not the least Trouble upon my Heart, nor the least Burden upon my Spirit, upon the account of my Sufferings; neither have I any hard Thoughts of God, but, on the contrary, can speak to the Praise of his Grace, that his Goodness hath carried me forth above the Fear of all these Things. And, my Friend, let me tell you further, that I have had more Experience of God, and more Acquaintance with God, within these three or four Days, then ever I had in all my Life; and at this present, I am so far from being dejected, or cast down in my Spirits, as that I am so much elevated and lifted up in my Soul, that I am not able to tell you how it is with me.*

And when he was ready to rise out of the Sledge, another Friend came to him, and ask'd him how he did, to whom he answer'd, *I bless the Lord, I am very well, and do no more value what I am now going about, than this Straw: (taking up a piece of Straw in his Hand.) I have, says he, made many a Charge in my Time, but now I have but one Charge more to make, and then I shall be at rest.*

*Mr. CORBET's Account of the Proceedings against him at Westminster.*

**T**hursday, April 17, some of his near Relations and Friends came to visit him, and having heard some malicious Reports to his Pre-

judice; as that he had deny'd his Name, and not own'd himself to be the Person that was mention'd in the Act, when he was at *Westminster*, at the *King's-Bench Bar*; earnestly desired him to let them know the Truth of Things from his own Mouth: To which he readily answer'd, That he was much misunderstood, and wrongfully represented, if any said so of him: And moreover said, That he blessed God, he was neither ashamed of his Name, nor of his Cause, nor of his Master, and hoped never should, and then related as followeth.

That his Brethren, Col. *Barkstead*, Col. *Okey*, and himself, being brought before their Judges, were there called all by their Names, to which they made Answer, and, as they were bid, held up their Hands. Then the Question being put, What they had to say for themselves concerning the Fact which they stood there arraign'd for, and which they were charged with in the Act of Parliament, at that Time read before them? Mr. *Corbet* answer'd, he did not take himself to be the Person named in the said Act, for that he did never maliciously, wickedly, and traitorously imagine, contrive, or endeavour to murder the late King, as was there charged upon him in the said Act, and therefore desired them to prove it. What! (said some on the Bench,) will you deny your Names now? Did you not answer to, and hold up your Hands at those Names? To which Col. *Okey* made answer, (not understanding Mr. *Corbet's* Drift, which was to have a Proof made, that they were Guilty, in Manner and Form as the Act expresseth it,) He would never deny his Name for the Matter: *No more will I*, saith Mr. *Corbet*, *neither do I; but may there not be more Men of my Name*, saith Mr. *Corbet*, *that perhaps may have been guilty of Malice against the King? though for my own Part I never was.* Then Col. *Okey* began to perceive his Mistake, and Col. *Barkstead* also; who being thus rectified, Mr. *Corbet* proceeded, and told the Judge, It was true, they were called by their right Names, and did accordingly own them; *Yet*, saith he, *it doth not judicially appear to this Court, that we are the Persons meant in the Act*, (putting an Emphasis on the Word judicially.) *No*, saith one, *the Parliament hath adjudged it, and you are the Men; yet however*, said some, *let a Jury be empannell'd:* And then the Attorney-General saying, that he was ready for a Trial, a Jury was call'd, against which no Exceptions being made, Evidences were taken, and they found Guilty.\* The Judge then ask'd again, What they had now to say, why Sentence should not pass? Mr. *Corbet* replied, He humbly conceived the Proceedings of the Court were not regular, nor agreeable to former Precedents; for according to Law, there ought

\* *The King against Okey, Barkstead, and Corbet.*

They having been attainted by Act of Parliament, for the Murder of King *Charles the First*, being three of his Judges, which sate in the High Court of Justice, as they called it, and having escaped, and being retaken, and brought to the Bar, and demanded whether they were the same Persons in the Act mention'd, they said, they were of the same Names, but there might be divers Persons of the same Names: But they (further) said, that the Court ought not to proceed against them, without having a Record of their Attainder here in Court, as was done in Sir *Walter Raleigh's* Case, where the Indictment, though long before, was (made) a Record of this Court, and produced; and thereupon the Record of the Act of their Attainder being removed by a *Certiorari* into *Chancery*, and thence sent hither by a *Mittimus*, was read unto them; whereupon they pleaded, That they were not the same Persons; and Issue was taken thereon, and a Jury return'd immediately to try it, which was done, and they were not permitted to challenge peremptorily; for they are not now to be tried for the Treasons, but (only) of the Identity of Persons, and the Jury found them the same Persons; and thereupon Sentence of Execution was immediately given, and three or four Days afterward, they were executed at *Tyburn*. *Levin's Reports*, Vol. 1. p. 61.

*Keling's Reports*, p. 13. *Memorandum*, That in Easter Term, 14 Car. 2. *John Barkstead*, *John Okey*, and *Miles Corbet*, three of those Persons who presumed to judge the late King to Death, were apprehended, they then being outlaw'd upon the former Indictment; and they were brought to the *King's-Bench Bar*, and demanded severally, What they could say, why Execution should not be awarded against them? (after the Indictment was first read to them) and they pleaded, they were not the same Persons; and thereupon, the same Day, a Jury was presently return'd, the Court sitting, and they found they were the same Persons, and so Execution awarded, which was after done accordingly.

Note, So is the Report in the Manuscript, but the Record is of an Attainder by Act of Parliament; but there might be an Outlawry also.

first to be an Indictment, an Information, and *Scire Facias*, (as was in the Case of Sir *Walter Raleigh*) all which were pre-requisite to an Issue in Law, as their Lordships well knew; so that here was a Conclusion without Premises: Yet if it should please the Judges to over-rule it, he was contented; (carrying himself with much Reverence and Respect unto the Court.) To which either the Attorney-General, or some other, replied, That Mr. *Corbet* said Truth, as to ordinary Proceedings, but here it was extraordinary, viz. by Act of Parliament in a Bill of Attainder; and then cited a Book Case of one *Stafford*, who was thus proceeded against, sentenced and executed in *Henry the VIIIth's* Time. To which Mr. *Corbet* replied again, he had nothing to say to that, but what the Authority of the Nation had made Law, he must submit to; and did acknowledge, as Things stood, they did proceed according to the Rules given them, and in that respect did what was just, according to the present Law. But did you not confess the Fact, saith one, by your own Flight? it being a known Maxim, *Qui fugam facit fatetur facinus*. To which Col. *Barkstead* answer'd, That he, for his Part, fled for fear of an Arrest, threaten'd against him for Twenty Thousand Pounds for pretended false Imprisonment. Mr. *Corbet* said, That he, for his Part, did not fly for Twelve Years together after the Fact done, and that any body who had a Mind to it, might easily have seized him, it being well known where he was all that Time; and when he did fly, it was not prohibited, nor any way unlawful, as conceived, for himself, or others, so to do; and now that he was return'd again, he knew not that he was an out-law'd Person, and, if Occasion had been, could have been ready to have traversed any Suit commenced against him. And as for what he had done in this Business, that there he stood accused for, he said, he was engaged in it by the then Supreme Publick Authority of the Nation, the Lawfulness of which Authority, he said, at that Time, was every where acknowledged and reputed so to be; and had he not this to plead for himself, he should then have thought, that what was done by himself and others, had been very wicked and abominable: But the Authority being, since that Time, changed, and new Laws made, by which, both the Fact, and the Power itself too, by virtue of which it was done, are both said to have been invalid, (though the Law-makers, at that Time, did not think so,) he had nothing further to add.

This is a true Relation of this Matter, as near as possibly can be, taken from his own Mouth; if any Mistake be in a Word ignorantly related, or Sentence misplaced, the Reader is desired to pardon it.

This Mr. *Corbet* having been heretofore bred at *Lincoln's-Inn*, and known to be a good Lawyer, and late Lord Chief Baron in *Ireland*, and also much acquainted, by long Experience, with Affairs of State, as having been a Member in all the Parliaments that have sat since the beginning of the late King's Reign; and being also further known to have been an ancient and long-experienced sound Christian, a Man of a very tender Conscience, and of an holy Life and Conversation, and that as well in his greatest Prosperity, as in his Adversity; it was the earnest Desire of many, even of all Parties that knew him, fully

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and clearly to understand from his own Mouth (especially now in this Time of his Affliction) what inward Peace, Quiet, and Satisfaction he had in his own Conscience, touching that Act which he was condemned, and very shortly to die for, and which passed under so many dreadful Names, of the most horrid, heinous, wicked, and unwarrantable Act that was ever done, of the vilest Murder, most execrable Regicide, detestable and bloody Crime, that Men ever were guilty of, and like unto which none hath been said to have been ever perpetrated in this World before, except the putting of Christ himself to death.

His Answer to this Question was the more desired, because he being taken for so good a Christian, and so able and experienced a Lawyer and Statesman, as is before described, his Opinion therein would be the more considerable, and his Words be of the greater Weight, which side soever they should fall, whether to the Justification or the Condemnation of the Fact.

Now to this Question (which he said he had long before examined thoroughly, and very well digested) he said he would make this true, faithful, and ingenuous Answer, and hoped he should stand to it, and maintain it to his last Breath. And although he did find (he said) some near Relations were not of his mind in it, yet for his own part he remained steady and unmoveable therein; and before several Witnesses (which he hath now left surviving) that heard him, declared as followeth:

1. He said, When he was named and appointed by the Parliament to be one of the Judges, he was not present in the House, nor did he at any time give his own personal Consent thereto, or Approbation of it, but rather fully resolved never to engage in that Business.

2. When the Bill came into the House, he spake against it, and gave his Reasons; nor could he be drawn by any Arguments to appear in the High Court of Justice, or allow of their Proceedings.

Yet, 3. The State of Affairs being as then they were, and the Consequence on both sides (either of owning, or not owning and joining in that Act) being with much Prayer and Consideration well weighed by him, he at last came to a fixed Settlement in his Mind about these ensuing Particulars.

1. That the supreme Authority of the Nation, as then it stood (notwithstanding the Alterations made in it) being generally accepted and submitted to at home, and owned by foreign States abroad, without any Question made of it from the Body and Bulk of the People (though here and there some scrupled it, whose Interest lay contrary) was lawful and sufficient to warrant all that was or should be done in reference to the late King.

2. That the solemn Appeals made to God on both sides, both by the King on his side, and by the Parliament on their side, all the time of the War, and answered so distinctly and fully from Heaven, on behalf of the Parliament (as all Men then seemed to judge) did further confirm him in the Warrantableness of their Undertakings, and Righteousness of the whole Cause.

3. That the Foresight of such miserable Changes, as by return of the Hierarchy, and the Concomitants and Effects thereof (which he saw was



aimed at, and did believe was intended by the late King; at least after some time) did greatly induce him to look into, and fully inform himself about the Matter of the Charge against the said late King.

4. That upon mature and long Debates of Parliament, and such as were authorized to search into the Charge aforesaid, he found things fully proved; and moreover said, That the Matters objected were of a very unusual and high Nature, but that which principally swayed him to do what he did, was the Blood of Ireland, and the levying War against the Parliament, who were thereupon forced for their own Defence and the Safety of the People (by whom they were trusted, and whom they did represent) to take up Arms, and so against their Wills to maintain a most costly, dangerous, and unnatural War.

5. That though he was now fully satisfied in his own Mind of the Lawfulness of the Fact, as well as of the Power by which it was done, and that it was his Duty no longer to stand out, but to join with his Brethren as an Actor in it, or else he might become guilty of Unfaithfulness to the Cause of God and his Country; yet such was his base and timorous Spirit, that he kept back and would not appear in it, the rather, because he was much set upon by his Nephew, Sir Thomas Corbet (who then lived in the House with him) not to meddle at all, or have any hand in it. Now this Sir Thomas Corbet having a very considerable Estate, to which himself was next Heir, and which (in case he should go cross to his Mind in this Business) he had Power (by cutting off the Entail) to give away from him and his Children, he was loath to displease; for he saw apparently which way his said Nephew was bent. Yet,

6. Notwithstanding this, Conscience wrought much with him, and would not suffer him (he said) to be quiet Night nor Day; for while, on the one hand, these carnal Fears and disturbed Thoughts pulled him from his Duty (so he called it) yet, on the other hand, it pleased God more strongly to draw him to it, by often bringing and setting home upon his Heart that Scripture in Rev. xxi. 8. *The Fearful and Unbelieving shall have their Part in the Lake that burneth with Fire and Brimstone.* This Text did so work and work in his Mind, and so powerfully prevail with him, that though he had deferred to appear at the High Court of Justice till the very last Day of the Trial, yet then he durst stay no longer, but made haste to come in and sit among them, come what would of it in this World, lest the aforesaid Punishment of the Fearful should hereafter for ever befall him. And what he now did (he said) he did it with a free and resolved Mind, and he blessed God that had conquered his cowardly Spirit, and enabled him at last (though late) to come in and do his Part, and in some measure to prove himself faithful and obedient to God's as well as the Nation's Call herein. And further said, that upon the Grounds before alledged, if all that hath been done were to be acted over again, he would do as he had done, and would not abate an Inch of it; which Words he spake with great Sobriety and Settledness of Mind but the very Day before his Execution.

Lastly, As to the whole Business, he said he could and did appeal to God, the righteous

Judge of all things, that what he did (as far as he could discern himself) was not out of any ill Spirit towards the late King's Person, nor out of any the least Malice or Disaffection to him, nor yet out of any unworthy End or Design of his own; for as to the said King's Lands or Goods, or other publick Title, he never desired nor endeavoured to get any of them, but always by good Providence kept himself free, that neither himself nor any of his might grow rich, or make the least Advantage that way. And as for that necessary and publick Act of Justice (as he called it) he did never repent at all that he had a hand in it, nor, after all the Searchings of Heart about it, did see Cause so to do, when at any time he had the most serious and calm Reflections upon it; though he did confess, as to the Circumstances of that Act (the Substance whereof he said he must always own) he had been compassed about with many sinful Weaknesses and Infirmities in the managing of it, as he had before in part hinted, which he hoped and believed were all washed away in the Blood of Christ.

*Mr. CORBET's Behaviour.*

ON the Day of his Execution, when he was finishing his Prayer, there was a Noise at the Door, occasioned by some that hasted to come in (not knowing what he was about) to tell him that he must prepare for the Sledge, but that he should be called for the last of the three.

In the mean while he fitted himself for his Journey; and first bethought himself of his Cap, saying, *Must I not carry a Cap to the Gallows?* and so looked out the best he had. Truly (said he) *I had almost forgot it; but it may be well excused, for I have not been used to these things.*

Then he took his Bible (which he promised to send back and give to his Keeper when he should have done with it) and put it into his Pocket, to carry with him as his best and surest Friend and Companion both in the Sledge and at the Gallows. Next, he put a little Bottle of Cordial into his Pocket for his Use by the Way, if Occasion should be; *But I hope (saith he) I shall find a better Cordial, else I know I shall faint for all this.* This done, and his clean Linnen got on, viz. Band and Cuffs, with his Cloak clean brushed and fitted about him, and also a new Pair of Gloves put on, which his Wife had provided for him, and which he called his Wedding Gloves, he was now in Readiness whenever he should be sent for; which a Friend taking notice of, put him in mind of a Speech which fell from him the Night before, saying, Sir, you said last Night, the Bridegroom was ready, and the Marriage-Supper was ready, and the Robes and Crown were ready, but that you were not ready; methinks you are ready now! and a very trim and handsome Bride! To which he smilingly replied, Am I so? the Lord make me so; blessed be God, I can say I am willing to it, as I have good Reason, for I am sure 'tis the best Bridegroom that ever was that I am going to. And you need not be ashamed to go, saith his Friend, considering what Garments you are clothed with, and how you are decked (alluding to those Words in Isa. lxi. 10.) To which he replied, Whatever we have of that kind, it is all of our Bridegroom's own Cost: He is not like other Bridegrooms, for he purchaseth his Bride, he

he cloaths her; and he adorns her; whatever Beauty she hath upon her Person, or Love in her Heart towards the Bridegroom, 'tis he only that put it in her.

Some of the Warders at the Door asking if he would please to go? Doth the Gentleman-Jaylor call for me? saith he. No, said they. Then, said he, I have not my Warrant yet to go, I must stay for that first; till that come, my Duty is to be passive; it being with me as it was with *Peter*; who was to be carried whither he would not; yet when I am called, I hope then I shall go without further bidding. Then he reminded us of being in the way of our Duty, and in that to trust God; but take heed (saith he) of Neglect of Duty, take heed of sinful Compliances, of apostatizing from God; take heed of Superstition, Popery, Idolatry; keep close to God and his Truth; Oh! trust God, trust in him, and then he will never leave you.

And now a Messenger was indeed come, to tell him that the Sheriffs were ready for him; And I for them, saith he; and so presently hastened away, without taking Leave of his Wife: Which one perceiving, said to him, Will you not speak to your Wife before you go? O yes, said he; and then turning back, saluted her; and committing and commending her to the Lord, bid her farewell: But she clinging to him, cried out, Oh, my dear Husband! my precious Husband! What an Husband shall I now lose! whom I have not prized, whom I have not improved, as I ought and might have done! Oh, saith she, what will become of me! At which Carriage of his Wife, though some Tears were ready to start from his Eyes, yet he conquered himself, and taking his Wife by the Hand, said, O my dear Wife, shall we part in a Shower? (which Words he had used on Occasion once before) Be contented, said he, God will be an Husband and a Father to thee and thine; with other such like good Words; and so kissing her, turned to his Son *Miles*, whom he took by the Hand, and blessed him also; and then hastened to the Sledge, desiring a Friend to stay with his Wife and his Son to comfort them.

When he was bound in the Sledge, and ready to be drawn away, one that had shewed him some Kindness in the Time of his Imprisonment, took him by the Hand, and asked him how he did? Methinks, saith he, I begin to see the Lord appearing; looking up to the Skies, which at that time (said he that he spake to) were as clear and bright as he had ever seen them: To this Friend *Mr. Corbet* said, Farewell; and the Lord requite you for all the Civilities that I have received from you.

As he rid along, he carried his Bible in his Hand, with his Eyes much fixed upon the World over him that he was now going to; and being naturally a very black, swarthy, melancholy Man, and aged also, his Countenance seemed sad and dejected at a distance, which caused such People as knew him not to think his Heart within too was like his Face without; but they were much mistaken; for though he abounded not, nor was lifted up with ravishing Joys, as some have been, yet he had an inward, firm, solid, well-settled Peace and Comfort; which was not now new to him, but which he had enjoyed and lived upon many Years, as is evident by many Passages which came from him even in the Sledge; take two for Instance, 'till more come.

When one asked how it was with him, after he had been drawn a good part of his Way? he gave this chearful Answer, *I am well now*, (saith he) *but I shall be better anon, when I am gotten yonder, above that Place*, pointing to the Heavens before him.

Not long before he got to the End of his Journey, one came from a Friend to the Sledge-side, to tell him, that Endeavours were used to get his Body for Burial. *What care I* (saith he) *what becomes of my Body when I am dead? let them do what they will with it, I bless God my Soul is safe.*

The several SPEECHES of Colonel John Okey, Colonel John Barkstead, and Miles Corbet, Esq; at the Place of Execution, April 19, 1662.

UPON April 19, 1662. being the Day appointed for the Execution of Colonel *John Barkstead*, Colonel *John Okey*, and *Miles Corbet*, Esq; who were drawn on three several Hurdles from the Tower to Tyburn, Colonel *Barkstead* was first brought to the Place of Execution, and then Colonel *Okey*, and then *Mr. Corbet*; who at a good distance of Time one after another mounted a Cart, which was prepared for them to stand in whilst they spake to the People.

Colonel *John Barkstead* was the first that ascended the Cart; and as soon as he was in, he lifted up his Eyes to Heaven, and said, *Blessed be God.*—And then immediately one, supposed to be of the Life-guard, cried out very loud, *He is almost dead; if he be not quickly banged, he will be dead before; therefore bang him, bang him, before he be quite dead: See how he looks.*

But, being much spent, he waved speaking to that; and after he was tied up, finding the Rope very strait, he would sit on the Side of the Cart to rest himself, but could not 'till the Rope was somewhat loosened. After resting himself, it was expected he would say something before the other Prisoners came, which was at least half an Hour's distance. The Sheriff therefore spake to him to this Effect.

Sheriff. *You must not speak any thing in Justification of such an horrid Offence, for which you came hither to suffer.*

To which Colonel *Barkstead* replied, *I cannot speak much, by reason of the Weakness of my Body; I desire to get as much Refreshment as I can before I speak.*

Then the Sheriff spake to *Mr. Hastings*, who was Under-Sheriff of the County of *Middlesex*, *Will not you dispatch one first of all?*

To which the Under-Sheriff answered, *We use to hang all together.*

Colonel *Barkstead* then lifted up his Eyes and Hands to Heaven.

Then replied the Sheriff, *Let it be according as it used to be.*

Then said the Executioner to Colonel *Barkstead*, *You may be going on in your own Prayers, and lose no Time.*

*Barkstead*. *I shall be but short.* And taking something out of a Silver Box, putting it into his Mouth, and lifting up his Eyes, said, *I bless God, I have a better Comforter than this.*

Then being asked by some Person of Quality, Whether he were not sorry for what he had done? He answered, *Sir, I shall be sorry for whatever the Lord convinceth me to be a Sin: When the Lord sets home*



home that upon my Soul, I shall express it unto God and Man; and truly that must be from him alone.

Then Mr. Thomas Porter spake to him, *I am sorry to see you there; but you will be a happy Man within this half Hour.*

Barkst. *I have, I bless God, an Assurance thro' Jesus Christ that I shall be so.* But feeling the Cart stir under him, as he did several times before, and thereby the Rope pinching him; he desired it might be eased.

Then Colonel Okey was brought towards the Cart; and when Colonel Barkstead saw him, he lifted up his Eyes and Hands.

Some of the Sheriff's Officers, when Okey came to the Cart, said of him, That he was a lusty, stout, brave Man, as ever fought in England.

Then said the Sheriff to Colonel Okey, *I hope I need not give you this Caution, That you make no Justification of this horrid Offence, not to justify that Offence for which you are brought hither this Day.*

To which Colonel Okey made this Reply: *Sir, I must not lye for God, much less for you; I hope you will give me Leave to speak what lies upon my Conscience, whether I am guilty or not guilty: We will speak something of what lies upon us.*

Then Mr. Corbet being at the Cart ready to come up, Colonel Okey stooping down to help him up, said, *Come, Brother Corbet, how do you?* and clapping his Hand upon his Breast, said, *I thank God, I have it here.* Then speaking to the Sheriff, he said, *May I have my Hat on, or stand bare?*

*Which you please,* said the Sheriff, *you have your Liberty for that.*

Then Colonel Okey addressed himself to speak to the People as followeth.

#### Colonel OKEY's Speech.

Gentlemen,

THE Providence of God hath brought me to this Place, to pay that which every Man oweth. I shall not trouble you with what is superfluous, which is, to tell you of my Family, which of all the Families in Israel was the least, and I was the least of that Family. It is not unknown to most here, what Troubles have been in this Nation, and how eminently the Hand of God did appear therein. Among many others that were called forth to serve the King and Parliament, (as then the Cause was stated) I was one, which I did faithfully, according to the best of my Power and Knowledge. I here do bless God, that I was called to that Work; for I am persuaded in my Heart that it was for the Glory of God, and the Good of his People, however it was turned at last; and if I had as many Lives as I have Hairs on my Head, I should have ventured them all in that Cause. I have nothing upon me as to that; and I thank God, I am fully satisfied as to that Cause: But I shall say no more to that, but only this in general, That as the Parents of him that was born blind, being asked by the Pharisees how he came to his Sight, answered, *He is of Age, let him speak for himself;* and so the Cause is sufficiently able to speak for itself. But as to that which I have been adjudged for, and am come hither to give my Life for, viz. the Death of the late King, I shall only say thus much, That I think most of you know, that I was none of the Council within nor without, nei-

ther did I know any thing of the Trial of the King, or who were the Judges, 'till I saw my Name inserted in a Paper; and I did sit there but once or twice: But for any Malice to him, I had no more than to my own Soul, but prayed for him to the last Hour of his Life, as I did for myself; and so I have done for this King also, which is my Duty to do. I have many hundred Times, since I went out of England, this two Years last past, and before also, begged with Tears of the Lord, if there were any Iniquity or Malice, of any Thing of that Nature, in what I did, that God would shew it to me; yea, the like I did this very Morning, beseeching the Lord, that if I had any Guilt of his Majesty's Blood upon me, or any Hatred against him, he would reveal it to me, that I might here confess it before you all. But I have nothing upon my Spirit as to that. And whatever other Men did, I shall say nothing to that; as for myself, I can say again, that I got not any thing by it, but remained in the same Condition; I was a Colonel before, and was no more since: I thank the Lord, I am clear in that. (Then, making a Stop, he said, There is such a Noise, I cannot speak) And, Sir, I shall tell you now what is upon my Spirit: I take what hath befallen me as righteous and just from the Lord, for my unworthy walking, for being no more zealous for God and his People, no more fruitful in my Generation, and no more thankful; but as for that thing, I thank the Lord, I have no Guilt upon my Spirit. And as for all my other Sins, I confess they are many and great; but I thank the Lord, he hath given my Soul the Pardon of them all, through the Blood of Christ, for his Name's sake, and thro' the Riches of his Grace, and his abundant Mercy towards me. And now I will only speak a Word to our Friends here. You all know we have had many Troubles, and much Blood hath been shed, and there hath been a Vacancy as to a single Person: But the Nation did earnestly desire him that now reigns; and I wish from my Soul he may reign gloriously and righteously, and reign here so, that he may reign for ever. And now they have the great Mercy they did desire, I wish that they would make a right Improvement of it, and that they would walk in some Measure answerable to that Mercy that they have so much desired. I shall beg this, as a dying Man, That as they have received a Mercy, which they account so exceeding great, that they would walk answerable to it, that God might have the Glory, and the Nation might yet flourish in Peace and Righteousness. I shall beg of these Gentlemen, (some of the Guard) and all others that have a great Affection to their King, that they would pray more for him, and love him more, and that they would swear less, and drink less; for if you were beyond Sea, to hear what I have heard of this Nation, it would make your Hair stand on end, and your Ears to tingle. They say certainly, that notwithstanding the great Answer they have had of their Desires, yet if they go on in the Way of Wickedness and Blasphemy, which they report do abound in England, (for my Part, I have been a close Prisoner, and have spoken with no body almost since I came) that this Nation cannot stand three Years together: Therefore I shall make it my humble Request, That as this Nation hath flourished and gone beyond other Nations in Piety and Religion, it might flourish

ten times more than it hath done these many Years upon the same Account. It hath been a Nation that hath professed the Gospel, which indeed hath flourished here more than in any other Kingdom, and so it hath had more Glory and Honour than other Nations; and I desire it may continue, that you may have Peace within your Palaces, and Plenty within your Dwellings. Oh that every Man would study in his Place to fear God, and honour the King, and to give Glory to God, and walk in some Measure answerable to those many Mercies they have and do enjoy! And, that as they have what they so much desired, every Man would now beg, that the Gospel may flourish, and that Righteousness and Truth may be in the Midst of you! There is something that I shall speak more; I would be loath to speak, so as to offend you in any thing. (Then replied the Sheriff, I am glad to hear these Expressions from you) Sir, let me tell you, because it is a very great Matter, and looks like a black Thing that is charged upon us in the Indictment, I should have abhorred it, had there not been a Face of Authority, an Authority that then was owned; had it not been so, I should have abhorred to have done any thing in that Business, as much as any Gentleman here: Therefore, I thank God, I have Peace as to that, and Peace as to all my Iniquities whatsoever, thro' rich Grace and Mercy. And truly as to the Cause, I am as confident even as I am of my Resurrection, That that Cause which we first took up the Sword for, which was for Righteousness, and for Justice, and for the Advancement of a godly Magistracy, and a good Ministry (however some Men turned about for their own Ends) shall yet revive again. I am confident, I say, That Cause for which so much Blood hath been shed, will have another Resurrection; that is, you will have a blessed Fruit of those many thousands that have been killed in the late War: But I would leave this to all my Brethren and Friends, that they would keep their Places, wait upon God, stand still and see the Salvation of God; and rather suffer, than do any thing to deliver themselves by any indirect or unjust Ways. If his Majesty had been pleased to have given me my Life, or if I had come over, or heard (for I had a Warrant for my Return into *England*, from the House of Commons; but I fell short two Days, and so was fain to go back) time enough of the Proclamation, I would, thro' the Blessing of God, have lived quietly, and rather have suffered, than have done any thing against the Law of the Land, and I would say this to all good Men and others; rather to suffer, than take any indirect Means to deliver themselves, but to wait upon God, keep their Way, stand still and see the Salvation of God: And God, when it shall make most for his own Glory, and the Good of his People, will deliver, and that in such a Way that himself shall have Glory in, and the Gospel shall have no Reproach by. But because some think we are Enemies to Magistracy and Ministry, I shall only say this, That I always (I thank the Lord) did pray both for Magistracy and Ministry, and that you might have righteous Laws established; that so Judgment may run down like a Stream, and Righteousness like a mighty River: And that shall be my Prayer now, That God would give you Peace

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and Truth, and scatter them that delight in Blood and War.

*Mr. CORBET'S Speech.*

WE are now dying Men, and upon dying Ground, and we are now in the Presence of the great God, to whom we are now going: Truly I desire to speak in his Fear touching that which we are here come to suffer for. I will only say this, (Mr. Sheriff) Both the levying of the War, and that Act that we are now accused and condemned for, if they had been done without Authority, they had been abominable; and to justify that Authority, I do not come here to do it. The Parliament, the Wisdom of the Nation; that now is, hath decried it down, and said 'tis void; and the Court of Justice, where we have been in Pursuance of their Judgment, hath given Judgment against us. Truly so long as that Act of Parliament stands on Foot, Judges must give Judgment accordingly; but there have been many Appeals about that Authority, and the Nation hath been governed by it, and the Nations about us have owned it, and we are now going to God who is the righteous Judge, and that Word is upon my Heart, *Isa. xxxiii. 22.* Truly Men may judge, and they may make Laws; and it is our Duty to submit to the Laws of the Nation, or leave it if we think them too hard. But whatsoever Laws are made, God is our Judge, and he will judge this Cause, and God is our Lawgiver: It is a Scripture Phrase, *God is our Lawgiver; and he is also our King; and he will save us: He will judge the Cause of his People:* And I hope that the Minds of sober Men will wait for that Judgment. Truly, Mr. Sheriff, as concerning that common Aspersions laid upon us, That we should be against Magistrates and Ministers; the Lord knows it is my Principle, and I desire there may be a standing settled Government, a godly Magistracy, and likewise a godly Ministry in this Nation: And I pray God grant that his People may be blessed under them. And truly, for the Magistrate that now is, the Hand of God hath brought him into the Throne: While I have been in other Nations, I have blessed God, and desired the Lord that he may rule for God, and be a Terror to Evil-doers, and countenance the true Professors of the true Protestant Religion, that he may defend both Religion itself, and the Professors of it. Truly there have been many (as they call them) Sects and Heresies, that have sprung up in these later Times; but blessed be God, there have been also great Appearances of God, and much Light is broken out, more in this Nation than I could ever hear of or see in the Nations round about, though they profess the same Religion. I have been among many whom they call Reformed Protestants, but of true Protestants, such as hold their Profession in their Lives, there are more in this Nation than elsewhere, and they are not to be compared for Number, blessed be God, and the Lord increase them and multiply them daily; for the Glory of the Nation is not in a Multitude of People only, but of such as fear the Lord, and worship God, and lift up his Name: And truly my Desire and Prayer is, That the Gospel, the true and glorious Gospel of God, the Gospel of Jesus Christ, may have a free

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Course



Course in this Nation, and may be glorified in the Lives of Men, as well as in their Words.

As for the particular Way of Worship that I am of, I shall only say, That in my Judgment and Conscience I have and do understand that which is called the Congregational Way to be nearest to the Word of God; and I do freely bear my Testimony to the Confession of it, that is extant, which was made at the *Savoy*: But with this, that also of the Assembly of Divines that was made in the Time of the Long Parliament, and the Declaration they made concerning Religion, saving only as to the Discipline-part: As to the other, I do fully subscribe unto it; for I think that the said Confessions are the most clear of any Protestant Confessions (whereof I have seen divers) that are extant; and in foreign Parts they will confess as much.

Mr. Sheriff, As to what I shall desire for the Nation (for truly we are taking our Leaves of it, and we shall see your Faces no more) that which I upon the Knees of my Soul do beg for this Nation, is, That as they are Protestants in Name, and take that upon them in Profession, so their Lives may be answerable. Truly nothing doth more dread my Spirit, and cause me to fear the Wrath of God to come upon this Nation, than when I hear that amongst those which bear the Names of Protestants, there is such Prophane-ness, Drunkenness, Swearing, and such Abominations that are not to be named, no not among moral Men. The Lord stop the Course of them, as also the Growth of Popery and Superstition, and that the Truth of God may break forth, and that Men may love it; for truly the Gospel is worth the loving, the Truths of God are worth loving: And if we love them, then truly God will love us, and bless us.

Mr. Sheriff, For my own Part, if there were any here that I knew I had wronged, I would ask them Pardon and Forgiveness, if I knew them. I must confess, I have been in many public Actions; I have been of all the Parliaments since the late King's Reign; and in the beginning of this Parliament, I must confess (I being called to it) did think it was my Duty to act according to the Ability God gave me, and to deny myself. I thank God for it, I came with an Estate to the Parliament; and I bless God for it, I spent it while I sat in the Parliament: And truly, I thank God, they cannot find any Estate that I have forfeited; for I have none to forfeit. This Business that we are here for, I was very far from being a Contriver of. When the Bill came into the House, I must confess, I being a Member of the Parliament, did somewhat wonder at it, and I did speak against it; but when it was pass'd, and I was named to be a Commissioner, truly, it being done by that that was then called the Authority of the Nation, I did think I was bound to obey in that Respect. I will say no more. I never sat but once in that they called the High Court of Justice; but for that I'll say no more. I do not come to condemn that Authority and Power; neither will I now (because the Parliament, and the Nation, and the Spirits of Men, are against it) justify it. (And being a little interrupted, he said) I will not speak to offend any Man. Truly, I thank God, I never got any thing, either of King's Lands, nor Bishops, nor Dean and Chapters Lands; I never knew what belonged to the Trade of buying

or selling Lands, I thought I was in a better Way, looking to that Station which God had called me to. And as my Brother said, Let Men hold to their Stations, and to what God hath called them; and so serve God and their Country, and let them not be afraid. And I think it is the Honour of good Christians, and of good People, to be obedient to the Government they are under, and to uphold it to the uttermost. I have not much more to say. If any Man hath done me any Wrong (as I perceived when we came along some Peoples Tongues were against us) I pray God forgive them. I desire not to open my Mouth against any of those Reproaches we met with. Some I perceived did express their Love, and their Love to my Soul; and I hope God will hear their Prayers. And while we are in the Land of the Living, I shall desire to do as we have done since his Majesty came to the Government. When we were in *Holland*, we did pray for the King and the Government, and desired of the Lord that they might settle Peace in the Nation; which, if we love our Country, we ought to rejoice in, and our private Interests must give way to it. And truly I shall desire even from my very Soul, that if any Man here or elsewhere hath wronged me, that the Lord would forgive them. And truly the Court of Justice that pass'd their Judgment upon us, as the Law stands, I think, did according to their Places. And if we may have Liberty in a few Words to commend ourselves to God, I shall trouble you no further; and I thank you for your Civility.

*Then Col. Okey spake a few Words, as followeth.*

Mr. Sheriff, I will not trouble you with any thing that he hath said, only something which I thought to speak, as to my own Judgment. But this I would leave among you that live in the Land of the Living. I have been in most reformed Places where they call themselves *Protestants*, but I must tell you, there is a great deal of Difference between their Ministers and the Ministers that be in *England*; and so of their Professors. And therefore, as God hath given you such Ministers as scarce any other Nation hath besides, so that you would honour and respect them; as also those that are Professors and godly People; not such as have a Shew only, but those that are really such, that you would countenance them, and honour them; for as for Ministers and People that live according to the Word, I think there are not such again in the World as are to be found in these Nations. I shall add one Word further.

I was, as near as I can reckon, a Major and Colonel sixteen Years in the Army (I only speak that, because I have a Word to say to another thing) I do not know whose Ox or whose Ass I took away in that sixteen Years time; and if I have done any Man any Wrong, I hope and desire they will forgive me, as one that had many Failings. And whoever hath proceeded against my Life, either in *England* or *Holland*, for there was one (who formerly was my Chaplain) that did pursue me to the very Death, where I remained but two Nights, and was going back again (for I had done my Business) but both him and all others upon the Earth I forgive as freely as I desire the Lord to forgive me. I have no Malice

Malice either to Judge or Jury, but desire that the Lord would forgive them; as also those in *Holland* that sent us over, contrary to what they did engage to my Friends: We will say nothing of them, but pray God that our Blood may not be laid to their Charge, nor to the Charge of any in *England*.

Then Colonel *Barkstead* addressed himself to speak, as followeth.

*Colonel BARKSTEAD'S Speech.*

*Mr. Sheriff,*

I Shall, as near as I can, observe your Order, and not willingly do any thing that shall give Offence. I must confess the Weakness of my Body is such, which hath not been of a Day, but of a long time, that it will not give me Liberty to speak much; and I have had this Advantage, that my Brethren have spoken before me; and were I to speak at large, I must speak over the same things which they have spoken already, and I am unwilling to trouble you with that, because you said your Time was overslipped, and therefore I shall only speak to the Cause as it was at first stated (and, I hope, without Offence, we may say something to that, so far as the Acts of Parliament have seal'd it up, or rather left it open.) Truly therein I did engage very freely at the beginning of the War for King and Parliament, and in the Place to which I was chosen, I bless the Lord he made me faithful to those I served: As to what hath been since that, I shall forbear to speak to, only in the general say, That before and since I came into this late Trouble, I have begged of the Lord to give me a Sight of all my Sins, and shew me a Pardon in the Blood of Jesus Christ; which, through free Grace and Mercy, I can say the Lord hath done. I could not have stood with so much Comfort as I do now at this time, if he had not given me an Assurance of the Pardon of all my Sins; and where he hath spoken Peace, there is none can speak War or Trouble. I conceive it not proper to give you here an Account of my Faith; for if I should, I should go very little aside from my Brethren that have spoken before me: That which hath been my Judgment and my Practice, hath been the Congregational Way; I must own that, and do. I should much rejoice to see a Spirit answering that great Mercy that the Lord hath given to this Nation; I mean that great Mercy that he hath bestowed in giving them the Gospel, and that in such a manner, as truly we, though we have been some hundreds and thousands of Miles among the Protestants abroad, yet I do not know it to be so pure as it is in this Isle, blessed be the Lord; and I hope to the Nation of *England* the Lord will give Hearts to walk accordingly.

And as to the Business of the Government of this Nation, as it now stands, I have prayed for it, and can pray for it, and shall, as long as I have Breath, pray for it; and do, from my Soul, desire that the Lord would bless the King, and give him a Heart to rule for him, and his Glory, and then I am sure the Lord will prosper him.

Indeed, as to those that fear the Lord in the Nation, I could wish that the Lord would settle them, and make them of one Mind; but that is the Work of the Lord, and it must lie there; and truly, he will do it in his Time. I must con-

fess, I speak the rather to that, because there hath formerly been something acted by me towards Persons that were not of my Judgment, which I have seen since was very hard; and I bless God, I have seen it, and have been sorry for it: And therefore I do desire, that all that fear the Lord, would make it their Work and their Business to study to love God, and to love one another, and to love the Nation wherein they live, and to give no Disturbance to it: For certainly, Sir, I should leave this, as that which the Lord hath settled upon my Heart; their Work is to sit still, yea, their Strength is to sit still, for the Lord will do his Work in his own Time; and when he comes to do the Work, there is none shall hinder. I think you have had all Experience of it in the late Works which the Lord hath done; for I must own it-his.

Indeed, Sir, I am sorry that my Weakness of Body doth prevent me from speaking more to you; yet I do bless God that I have this Opportunity. All I shall say further is, That there is a Truth (and I hope I may speak it without Offence) that is much upon my Spirit, and I am confident I shall speak it without any Offence at all. I think we are all here Christians, and there is none here (I think) but saith the Lord's Prayer, and says, *Thy Kingdom come, thy Will be done in Earth, as it is in Heaven, &c.* and I hope they go through the Prayer, and say why they do pray that Prayer; also say, *For thine is the Kingdom, the Power and the Glory, for ever and ever: Amen.* God hath given the Kingdoms of the Earth to Jesus Christ, he shall reign; and happy and blessed is that King and Nation that hath him for their King. And certainly, for His Majesty that now is, to reign under Jesus Christ; is no Dishonour at all to him: For Christ doth, and shall rule over all the Kings, Princes, and Nations in the World. And therefore, indeed, this is that Kingdom that is most certain, and that we do desire, and all pray that it may come; and I do wish that all Persons would have a Tenderness, and not to be at Enmity with, nor hate; nor, as much as they can, cut the Throats of those that own that Kingdom, and the coming of that Kingdom.

As to other Things, there hath been so much said, that I shall forbear speaking; only this, as to the Business of the King, I bless God I can say it, I was no Actor or Contriver, either within or without. I was many Miles from this Place when that was doing: I was put in by the Authority that then sat, and I was called and chosen to that Work; and truly, what I did, I did without any Malice, without any Contrivement in the least; and did, even to the very last, pray for him: And since His Majesty, that now is, came to the Throne, I have, as I have pray'd for my own Soul, pray'd for him, and that he may reign in Peace and Righteousness, to the Glory of God, and the Good of all the People of the Nation. I shall not trouble you with more, because I see your Time is past, and my Weakness is such, that I am necessitated to break off.

*Then Col. OKEY spake further, as followeth.*

*Mr. Sheriff,*

IT is not only our Judgments now, but it was our Practice when we were beyond the Seas, we did shun any Disputes, nay, we avoided Occasions



casions of seeing our own Countrymen, because we would have nothing to do with the Affairs in England, but to pray for them, and to persuade to be quiet, and to sit still; so that we may say, as Paul did in another Case, *They neither found us in the Temple disputing, or wrangling, or stirring up the People; only our Work was to pray for them.*

Then Mr. Corbet said, *Now we have done speaking to Men, we may now speak unto our God; truly, he must help us, and give us his own Spirit: Men may say Prayers, and read them, but to pray in the Spirit, and to pray so, as to be accepted with God, requireth much Strength and Assistance from him.* Then Mr. Corbet address'd himself to Prayer, which was very long. The Conclusion was omitted, because of a bustling among the Horses.

Then Col. Okey address'd himself to Prayer.

Then Col. Barkstead address'd himself to Prayer, having first spoken to the Sheriff these few Words following.

*Mr. Sheriff,*

*I do see your Time is spent, and we are drawn up into a very narrow Compass; and I hope you will take my Word now as before. I shall only speak a Word or two unto the Lord, and no more.*

Then Col. Okey spake a few Words more, as followeth.

*I did break off Duty, because you desired it, and I would not be troublesome to you.*

Then he very earnestly express'd himself further, as followeth.

*O love the Lord, and hate all Things that are evil. I have found by Experience, more Evil in the least Sin, than Good in any Thing this World can afford; therefore I beg it of all that are here, to love God, and to hate that that is evil. The Lord give you Peace and Truth. I hope our Relations shall not fare the worse for us, but that you will shew them Kindness. And as to what my Brother said, I thank the Lord, I have the Assurance of his Love, and the Pardon of my Sins through the Riches of his Grace, and free Love in Jesus Christ.*

After this, Col. Barkstead call'd a young Man, who was known to him, and taking a Silver Box out of his Pocket, he charged him to give it to his Daughter.

Their Speeches and Prayers being ended, the Executioner clear'd the Cart of the rest of the People who were gotten in, and then pull'd down their several Caps over their Eyes, and upon the lifting up their Hands, the Cart was drawn away; at which Time, Col. Barkstead especially was heard to say, *Lord Jesus, receive our Souls;* and after he had hang'd for a little Space, he lifted up his Hand.

That which many did especially take Notice of, was, That there was not so much as the least Attempt made by any to raise a triumphant Shout upon the drawing away of the Cart; but there

rather appear'd the Symptoms of an universal Face of Sadness in that vast and generally tumultuous Assembly, who were the Spectators of their several Deaths.

They all hung near about a Quarter of an Hour: The first that was cut down was Col. Barkstead, who was quarter'd according to the Sentence; the other Two hanging all the while. The next cut down was Col. Okey, Mr. Corbet hanging still, who, after Col. Okey was quarter'd, had the Execution done upon him also, according to the Sentence. Their several Quarters were brought back to Newgate, about Five of the Clock in the Afternoon, to be boil'd.

#### *A brief Account of Col. OKEY's Funeral.*

WHEN Col. Okey's Body was quartered, it pleased the King to send a Warrant to the Sheriff of London, to deliver the macerated Body to be buried where his Wife should think meet; which Thing being granted, without Petition or Application from her, or his Relations; and the Rumour of his Funeral suddenly flying about the City, and the Place appointed at Stepney, (where his first Wife lieth in a fair Vault, which he purchased formerly for a Burying-Place for him and his Family,) there was a numerous Concourse of sober, substantial People assembled to Christ-Church, to attend the Corpse, and some Thousands more were coming thither to that Purpose; so that there were in view about Twenty thousand People attending that Solemnity at, and coming to the Place aforesaid, who in a solemn and peaceable Manner behaved themselves, as that Affair required: Yet it so pleased the King to revoke his first Grant to Mrs. Okey, and by the Sheriff of London to disappoint and send home again the Company attending the Funeral; which the Sheriff with much Harshness, and many bitter Words, did his Work. The People, though much troubled at the Disappointment, yet, so soon as they understood the King's Pleasure, departed, and left the mangled Limbs to the Disposal of them that had devoted them to the Gibbet and Ax: The Company left many a thousand Sighs to attend him to his then unknown Grave.

That Night the Body was carried to the Tower of London, and there, by Mr. Glendon, Parson of Barkin, was buried with the Service-Book, afresh wounding his bleeding Limbs thereby; but Rapes are imputed only to the Ravisher. Mr. Glendon could not but say, that his Body was laid there, in sure and certain Hope of a joyful Resurrection. His Testimony was true, though a Poet of their own. And now there he lies, and the Tower of London is his Tomb. His Epitaph he partly writ in the Hearts of Thousands at the Place of Execution.

*For a particular Account of the Characters and Behaviour of the Regicides, and their Trials, (as given by their Friends) see Ludlow's Memoirs, Vol. 3. p. 59, to 93. and p. 99, to 104.*

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*The Speech and Deportment of Colonel James Turner, \* at his Execution in Leadenhall-Street, January 21, 1663, who was condemn'd for Felony and Burglary, in breaking open the House, and robbing of Mr. Francis Tryon, Merchant, living in Lime-Street, LONDON.*

*About Eleven o'Clock, Col. Turner, (attended with Mr. Ordinary of Newgate, and another Minister,) was drawn in a Cart to a Gibbet erected in Leadenhall-street, at Lime-street end; where coming, Col. Turner call'd the Executioner to him, told him, that his Friends were desirous of all his Cloaths, and that in Consideration thereof he gave him 50s. and 2s. 6d. to drink, and about 15s. to the Serjeants and Yeomen, attending to see his Body and Cloaths deliver'd to one Mrs. Smith there: And standing in the Cart, said as followeth.*

**S**IR Richard Ford, and you, the other Mr. Sheriff, and all you Gentlemen: I am come hither to pay that Debt I owe, and that every Man owes to Nature; 'tis the just Hand of God upon me for my Sins, and there is no Man hath done me Wrong in it; and truly, it is my Sins, and the greatness of my Sins, (and that I am very sensible of,) hath brought me hither; and the greatest Sin that troubles me, and lies upon me, (which I hope the Blood of JESUS CHRIST, nay, I am confident, the Blood of JESUS CHRIST hath washed all my Sins away,) is that Sin which I was much addicted to, and that was the Sin of Prophaneness; of blaspheming God, of taking his Name in vain. It is truth, I must not only accuse myself, but, in some Sense, give you the Truth of my Conscience. I never heard any Man or Woman, or whatever they were, swear in my Life, but I did tremble to hear them: For keeping of Company with Gentlemen of Honour (they were Men of Quality, though that were an ill Quality in them) was the Occasion of it. I never kept Company with any poor, base, inferior People, with any Thief, or any such like base Person, in all my Life, but fled from them, and avoided them, 'till this Accident. Truly, those poor Men engaged in it, I must free them, I brought them into this Business clearly and freely; and I beseech you, Mr. Sheriffs, as I am a dying Man, that you will help those People in this Business; poor silly Men! As I was telling you, for that great Sin of Swearing: Keeping Company with Persons that did swear, I did get a Habit of Swearing, though I hated it and loath'd it, when I observed it in myself, and yet may be, did it again, forgetting presently and not observing, being of a hasty Nature. It was

my Rashness, and my Inconsiderateness, that hath brought me hither. Gentlemen, it is expected by all the City, and by all the World, that knows me, that I should make some great and notorious Confession; it is Truth, I must, and freely do here confess, as I said before, that 'tis my Sins in general, and that Sin of blaspheming God's Name; I do charge myself particularly with that, as the Occasion of bringing me hither: As for the Fact itself, I do tell ye, it was my own Act, my own Contrivance, and the poor Souls that are yonder, knew nothing of it.

Gentlemen, you will live when I am gone: There is my two Sons; I here declare, as I expect Mercy by and by, at the Hands of my Saviour and my God, they are as innocent as any Person that looks upon me. For the youngest, my Son *Ely*, he never knew or heard of one Penny of the Money, or Business at all; therefore he is clear; he was in his Bed that Night it was done, and in the Morning it was removed from my House: For the elder, he never knew of any Monies, or any thing of it; only I did tell him, that it was a Merchant's Money that was broke, and that I would secure it for his Wife and Children; so that he was clearly innocent of any thing of the Fact, of the Robbery of the House; he knew not that it was Mr. Tryon's Money, but did carry that Money with me to *Tower-Hill*, as I bid him; so that he is as innocent as the younger. You understand me, Mr. Sheriffs; if you bid your Servant take so much Money, carry it, and dispose of it as you direct him, What is it to him how you came by that Money? So that I say, this elder Son, he is (I speak in the Presence of God) as free as the other.

I do beg and beseech you, Mr. Sheriffs, in the Bowels of tender Mercy and Compassion, that you would go to the Lord-Mayor, to the Court of Aldermen, that these two poor young Men may be discharged; let them not lie there until the next Sessions, among Thieves and Murderers, for they will be utterly undone. They are come from the Loins of good Parents; my Father was an ancient Reverend Divine, a Parson within eleven Miles of this Town, a godly Minister, forty odd Years Minister of one Parish; no Man more beloved than he, a Man of Charity, and for Peace, never suffer'd them to go to Law;

\* This Speech should follow his Trial in Vol. 2. p. 523.



he was Justice of Peace amongst them, Mediator for them; if any Poor wanted any thing, they came to him, he relieved them; he did all the Poor's Business, and composed the Differences of the Rich likewise: I am the Son of that Father, though an unfortunate Son. My Wife was a Gentlewoman's Daughter in *Dorsetshire*, her Mother had a great Portion, and is yet living; they are of the Family of the *Foyles*, 8000*l.* the old King had of her Uncle, which was lent; they were Persons of Quality. I say, these Children, they came from the Loins of good Persons. This I speak in reference that you will take that fatherly Care, that these two poor Boys may be turn'd out of Prison. Their Mother hath nothing to support them: Suppose it your own Wife's Case; add not Affliction to Affliction; restore her Children to her this Night, let me beg it, that God may be praised and glorified in the Truth of all Things. Will you promise it, Mr. Sheriffs, that you will endeavour it?

*Sir Richard Ford.* I do; I have been ready at all Times to promise you any Thing which was in my Power to perform; but ask not that which is not in my Power to grant: You desire they may be discharged to Night.

*Turner.* That's but comparatively; as soon as possible.

*Sir Richard Ford.* I do promise you, that this that you have declared concerning your Sons, shall be communicated to the proper Judges, and I will endeavour that they may be put out of our Goal.

*Sir Richard Rives.* And I will use my Endeavours in the Thing.

*Turner.* Pray do, they know nothing of it; pray put them out, my Wife will want them; she hath no Comfort left, and this will ruin her.

*Sir Richard Rives.* We will do our Endeavour; proceed on.

*Turner.* I have done, that's for the Children; then for *William Turner*, what he did, he did at my Instigation; he acted this at my Entreaty, it was wholly by my Direction, therefore let the poor Man be likewise discharged, if there be no other Thing against him but this Fault.

*Sir Richard Ford.* We will promise that we will take all Occasions to give an Intimation to the Lord Chief Justice what you have declared, in extenuating of his Crime, as he was a Hireling of yours.

*Turner.* I have told you that it was my Sins that hath brought me hither; and truly I must deal really with you, this Nation is very full of Sin, of crying Sins, of Sins, that (without God's wonderful Mercies) the Land will suddenly mourn by his Hand: I have every Year expected the sweeping Plague to come and take away two thirds of the Nation for the Sins that lie upon us; and truly, notwithstanding the Ministers of God do preach, and call, and cry aloud, yet no body regards them. Truly, from the Magistrate to the very Peasant, there is abundance of Neglect to the true Service and Fear of God, that my Soul has bled and groan'd within me, as I have gone up and down the Streets, and as I have lain in my Bed. And I must ingenuously confess to you, that I have not once or twice, nor a hundred Times, but a thousand Times, wish'd myself dissolved, and in another World. I have been sick of it, not for any Want, but with the meer Trouble, the Dislike

that did so displease me, to see all manner of Business in Tumults and Disorders, and Sin, and all manner of Wickedness; that truly I have had no Pleasure (these latter Years) in the World; indeed I have not. I have (to my poor Wife) said many a hundred Times, Lord God, that thou wert in thy Grave, and I too, were it not for these poor Children; truly, I could beg it of God, seeing all People are in Combustion, none tied in Love and Amity. When I was a Boy, there was no such Doings; my Father, I told you, was a Minister, there was eight or ten Gentlemen, adjoining Families, who kept a House of Hospitality, loving Friendship, Peace and Quietness; but now there is no such thing in the World: It is a new World, a World of Malice and Difference; and 'tis to blame, that Brethren do not hang together in Unity.

It is expected, that I should declare here, as a dying Man, somewhat to free myself from those Aspersions, Accusations, and Calumnies, that have been laid upon me; those Marks with black Coals that People have laid upon me; I do declare to you, there are a great many Scandals that lie upon me. I shall not justify myself at all, but rather accuse myself, that I am, as *St. Paul* saith, *The greatest of Sinners*. But for those Things that are laid upon me, I must clear my Family and my Reputation, as I can before God, and in *JESUS CHRIST*. It is laid upon me, that I should take 200*l.* of *Dr. Hewyt's* Lady, for to assist her in the helping her Husband, that was, in the getting him a Pardon or Reprieve. To that I answer, (I know not whether I shew'd you, Mr. Sheriffs, my Lady's Certificate or no; I heard not of this Business 'till within these two Nights) I never heard of her, nor her Husband, in such a manner; no, I would not have had that Sin mix'd with my Blood, not for ten Thousand Worlds; I should have thought, whenever it had enter'd into my Cogitations, I should have thought myself eternally lost: But about that, I sent Mr. *Gray*, of *Black-Friers*, who rode thirty-two Miles the other Night, and he hath brought a Certificate under her Ladyship's Hand to the King; which Certificate, if they will go to my Wife, they may have it, and print it. She writes, shewing it to the King's Most Excellent Majesty, That she was inform'd, that *James Turner*, Gent. a Prisoner in *Newgate*, is accused for taking 200*l.* of her towards the reprieving of her Husband; she doth declare she never knew him, nor heard of him, therefore she is bound in Conscience to free him; and so she humbly takes her Leave. This is attested by that Gentleman, with an Affidavit under the Hand of *Sir John Brampton*, Knight. She got a Letter from Secretary *Thurlow*, wherein he writes, and sets forth all the Business, That one Col. *Whetton* had 235*l.* of my Lady *Hewyt*, to procure this Business; and that *Whetton* did pretend, that he had given *Thurlow* a Hundred Pound of it to that Purpose, which he there, under his Hand, denied that he ever received one Penny, directly or indirectly; so that *Whetton* was the Person clearly accused, and she sent me Word, she is suing him for the Money; so for that I hope I have vindicated myself before God and the World.

In the second Place, there is another Calumny thrown upon me, and that is, That I should cozen or deceive the King that now is of some Money, when I was beyond Sea with him; truly, it is well

well known to Thousands of the World, I was never out of *England*, never beyond Sea with the King, never cozen'd him of a Penny; that I have served him and his Father with all the Substance that I had, with my Blood, and with all my Fortune and Goods, as a hearty Subject should, and I pray God receive my Soul but with a Drop of his Mercy, so sure as I served the old King, and pray'd for him, and loved him.

The first Commission that ever I had, was eldest Captain of Horse to *William Marquis of Newcastle*, in his own Regiment; I gave him the Troop, Four-score and seventeen Men, well Horfed; I never received one Penny Advance for the said Troop, and but one Week's Pay for myself and Officers, and three Weeks Pay for my Troopers, in all my Life, not a Penny more: I served him faithfully four Years, or thereabouts. I was a Prisoner at *London-House*, at *York*, in the *Tower*, at the Council of State, the Court-Martial, and the Council of War of *Oliver's*: I was a Prisoner at *Luton* in *Bedfordshire*; bringing the King up from *Newark* to *Oxford*, I was wounded, shot in the Neck, and taken Prisoner: And 'tis very well known by *Mr. William Cotton*, who is one of the Gentlemen Harbingers of the King's, he is the ancientest to this King, and hath served his Father in that Office; it was his Fortune to be hard by when I was shot, who was then a Stranger to me, but he being one of the King's Servants, and hearing a Lieutenant Colonel of the King's was slain, he came in; after I was shot, I was crept into a Hedge among Briers and Thorns, so deep, that he was forced to cut a Way to come at me, and so drew me out, or I had died there. I was Prisoner at *Luton* so to *St. Alban's*, where I lay in Cure in the Compter, 'till it cost me, my first Penny reckoning, sixty odd Pounds in Gold; they trusted me, and took my Word, 'till I could send to *York*, where my Wife lived, nineteen Miles beyond *York*: When I was able to ride, I was brought to Town, put into *London-House*, where I abided, and paid my Ransom, no Exchange would be allow'd. The King that is dead, (of blessed Memory) sent three Exchanges for me, his own Trumpet, *Sir Marmaduke Langdale's* Trumpet, and my own Trumpet. The Committee at *St. Alban's* returned the Trumpeters Word that I was dead, for my Wounds were mortal, and so I believe they did think I was dead. Afterwards I had Command of more than one Troop, and I was Lieutenant Colonel to *Sir John Preston*, and was eldest Captain to the Marquis of *Newcastle*.

*Sir Richard Ford*. I have no Pleasure to interrupt you; if you have any thing to say, that may fit you for your Change, as Marks (for avoiding these Inconveniencies,) to the People——

*Turner*. I have done, *Sir Richard*.

*Sir Richard Ford*. I do not apprehend this a proper Work for a dying Man, in good Earnest: methinks it is not a proper Work, for you to give this Narrative now of the Affairs in the Army.

*Turner*. I have but a few Words more; I have wholly told you, that it was my own Contrivance, and no body's else, that I come hither, and therefore I do justly suffer here by the Hand of God and Justice; and I do desire all Christian People, that either hear me, or see me, or shall hear of me, that they will take Warning by me; it is the first Offence of this Nature that ever I had to do withal in my Life. God is my Witness,

as I said before, I never knew a Thief, or dishonest Man, but I avoided them: But I say, and I could wish with all my Soul, and I desire it earnestly, that all People would take Warning by me this Day, and to avoid, as much as may be, all Sins in general: And I must declare to you likewise, that if it had pleased God, that two of the Officers had not met me, and arrested me in *St. Mary Ax*, between Two and Three of the Clock, and carried me here to the *Hoop Tavern*, where they staid me, *Mr. Tryon* had had every Pennyworth of his Goods and Money, and not lost a Farthing, nor a Hair of his Head; but God forgive them. A great deal of Blame hath lain upon me about those Villains, who were half drunk, and beat *Mr. Tryon*. I say, he had *bad* all his Goods again. God above, that hears me, knows my Soul, it was not intended to rob him, or to hurt him, it was to ingratiate myself; the Reasons I told him Yesterday. He is the worse Man, the best part of 10000 *l.* since his Wife died; and I had lately discover'd which Way and how: I have told him of the Person, but this is not a Place to name him, or speak of these Things; I hope God will give him Wisdom to avoid Dangers, and to make Good of what I told him Yesterday; a worse thing will come; for he will be robb'd indeed, if he have not a Care: He should have been robb'd about a Year since, and he did employ me to enquire after it, and discover it: I have given him Warning several Times: He is an honest brave Gentleman, a good Christian, and an honest charitable Man. But, *Mr. Sheriffs*, assure yourselves, so sure as I am going to Heaven, I shall be there in Glory, so sure had *Mr. Tryon* (if I had not met with these two foolish timorous Officers) have had his Goods and Money again, there never had one Word of this Business been known. 'Twas a sad Fate, that these two Fellows, out of a little Fear, should be the Occasion of my coming hither; but God forgive them; *Stubs* and *Lyons*, I mean, these two Villains, I have no body to thank for my Blood, but them; and yet do I free them, and freely forgive them: And I forgive the whole World, as freely as I desire God and CHRIST JESUS should forgive me. *Mr. Sheriffs*, are you satisfied in this? Would you have me say any more touching the Fact?

*Mr. Sheriff*. It is Satisfaction to us, if you are satisfied yourself.

*Turner*. This Morning, as I was coming out of the Prison, to add Scandal to Scandal, one came and charged me I should clear myself about a Fire in *Lotbury*, in the new Buildings, whether I had any Hand in that; the Lord Jesus Christ knows my Soul, 'till even now they ask'd me the Question, I never thought of it, but was then heartily sorry, and in my Bed when I heard of it.

Another sent me a Letter, but I tore it, one *John Marshal*, touching some Money that was lost in *Coleman-Street*; he might as well have asked the Person to be born, as have asked me, for I knew not of it. And one brought a Deed of one *Katherine*, I forgot her other Name, alack, I know nothing of it. There was another large Paper put into my Hands, touching a Man that died in my House, one *Turner*, a tall proper Gentleman, a Clothier of *Kent*; he came to my House, and desired me to furnish one *Daintry* with five hundred Pounds, which he had a Place at the Custom-House for: This *Turner* was a Stranger



Stranger to me, only a Name-sake : It is thought, as by the Paper was hinted, that he should have something put in his Drink, which should occasion his Death ; he drank nothing at my House, more than what my Wife and self, and two or three honest Gentlemen, that were there. He told my Wife once, *Cousin*, saith he, *I am very ill, pray give me a Cup of your Water* ; he had drank a Glass or two of Wine ; there was but one Bottle among five of them ; and soon after, this Gentleman fell asleep, with his Hand on his Check, and never waked again : He died of an Apoplexy, or Lethargy ; as the Coroner found it. I must clear myself of this, because I have received a Paper, it was at the End thereof hinted, Whether I did know if *Daintry* was not concern'd in this Business ? The Man could not put any thing into our Drink sure ; I have heard of your *Spanish Tricks*, but I must free *Daintry* of that, according as I understand it. He was to do *Daintry* the Courtesy, and surely he would not so reward him. I believe *Daintry* was as free as any body ; but the Jury and Coroner did return, that he died of God's Visitation, a natural Disease, and I hope I have satisfied the World of that.

Mr. *Ordinary* of *Newgate*. Pray, Colonel *Turner*, know you nothing of a Glass Jewel, deliver'd to the Countess of *Devonshire*, in the room of another ?

*Turner*. I know nothing of such a Thing ; I never had any Jewels of her in my Life ; she is an honourable Person, she will not speak of such a Thing.

I will now give Account of my Faith. I have been bred up a true *Protestant* of the Primitive Church of *England* ; my Father bred me, and instructed me very strictly in the Law of God : I will not tell you when I came to 'Prentice, I'll let that alone : I am free of the Company of *Drapers* ; and I have lived civilly and honestly in *St. Martin's*, at the upper end of *Cheapside* ; I am sure there are a Thousand sorrowful Souls, and weeping Eyes for me this Day.

Sir *Richard Ford*. Pray put that little Time that you have to spend here to good Use, and leave off these Relations.

*Turner*. Have a little Patience, let me satisfy the World of some Particulars ; I was a constant Church-man, 'tis well known to my Parishioners ; I never durst see a Man in the Church, with his Hat on, it troubled me very much. If a Man comes before a Judge on Earth, he is not suffer'd to wear his Hat, much less should they before the Magistrate of Magistrates, the God of Heaven.

Sir *Richard Ford*. Hear me one Word ; those reverend Persons about you, methinks they should admonish you to leave off these Discourses.

Mr. *Ordinary*. We press to the Condemnation of a Man's self, that he might be justified in God's Sight.

*Turner*. Mr. Sheriff, I will hold you but a very little while longer, I do here truly confess that I have been, as I have said, a very great Sinner, guilty of all the Sins in the World.

Mr. *Ordinary*. Speak to some Particulars.

*Turner*. Pray be quiet, can ye ? — Especially that of *Prophaneness* ; I am truly sensible, heartily sorrowful for my Sins ; and I do beg of God, of his infinite Mercy, through the Merits of Christ, who died for me, to wash away all my Sins, and all the Sins of this People here present, and all the Sins of the whole World. I do beg,

that God will open the Heart of any Man that staggers in Faith, to confirm him. I do say, and pawn my Salvation upon it, That no Man dare gainsay that Jesus Christ died for Sinners, of whom I am chief : That Man that lays hold upon Christ by Faith, the Gates of Hell shall never prevail against him. Truly, I am thought to be a great Drinker, a Company-keeper ; my Occasions did call me to Taverns, but I bless God, I think there is no Man, (pardon me, for I will not speak it with Ostentation) I hope no Man ever saw me disguised in Drink, to my Knowledge, except it was when I was a Boy. I am truly, heartily, and sincerely sorrowful for my Sins : I do confess them before my God, and the whole World, that the least of my Sins are able to throw me into Hell ; but that the Blood of Jesus Christ, that doth wash away the Sins of the whole World, hath purged and cleansed mine. I say, I do here heartily, solemnly, and wholly confess my Sins, and am truly sorrowful for them ; that is my Confession, with more Trouble of Soul, than I am able to express. Here I have made my true and faithful Confession. In the second Place, I have made Restitution, so far as in me lay ; the Gentleman hath every one of his Jewels again, every Farthing-worth ; nay, he hath two Thousand Pounds worth more than he miss'd, therefore there was no Intention of Felony : But my sad Fate in meeting with those two sad Officers, God of his Mercy everlastingly forgive them, —

Mr. *Ordinary*. Express your Charity as to the World.

*Turner*. Do not put me out of my Way, I must go Step by Step. First, I have given you my Confession : Secondly, I have made Restitution, I have restored all to my Power : The third Thing that is behind of a Christian, is my true and unfeign'd Repentance, and my Charity to the whole World ; that God, that is the Searcher of all Secrets, that tries the Reins, that knows all the inner Parts, knows my Soul, that I long and desire to be with Jesus Christ in Glory.

Mr. *Ordinary*. Which is best of all.

*Turner*. I am in perfect Charity with the whole World : It is expected by some, that I should fall upon some Persons to recriminate on them ; I shall not do it, the Lord God of his infinite Mercy forgive them. It was reported to His Majesty, that on *Sunday* last I was drunk, and that I abused this reverend Person Mr. *Ordinary* : This News was brought me by some that were present when the King was told such Stories, that I was drunk, and ranted, and swore God damn me, and God sink me, and that I had five thousand Pounds, and I would have a Pardon, and cared not for the Business, and would have a Pardon when I please. This great Reproach was thrown upon me to the King, and that, with some other Scandals, has taken off the King's Affections : But this is altogether false ; for Mr. *Hicks*, my Landlord, can tell, that on *Sunday* Morning he would have had me drank my Morning's Draught, I told him, No, I would not drink : I only drank one small Cup of Cyder in the Morning, two little Glasses of Sack, and one Glass of Claret at Dinner. I went to Church with this reverend Gentleman, where I received a great deal of Comfort to my Soul, for which I thank him : He made a sound Scholar-like Sermon, and fit for Persons in our Condition. I did perceive they wanted a Clerk, and I took upon me to officiate

as Clerk, and I was happy I had that Opportunity. I came home, and remain'd in my Chamber. About Eight or Nine o'Clock, Justice Stringer came to me in *Chancery-Lane*, and two or three Knights and Persons of Quality, eight or nine in all: They had one Bottle of Sack among them, of which I drank one little Cup: And for the swearing of those Oaths, I did not do it, I hate them, they were Untruths, and the Lord forgive them that raised that Scandal.

Sir, I must desire that you would now join with me in Prayer; but I have forgot one Thing, it is short: That Night the Sessions broke up, I was put in the Hole: It is a most fearful, sad, deplorable Place; Hell itself, in Comparison, cannot be such a Place; there is neither Bench, Stool, nor Stick for any Person there; they lie like Swine upon the Ground, one upon another, howling and roaring; it was more terrible to me than this Death: I would humbly beg, that Hole may be provided with some kind of Boards, like a Court of Guard, that Men may lie down upon them in Ease; for when they should be best prepared for their Ends, they are most tormented, lying only upon the Ground; they had better take them and hang them as soon as they have their Sentence.

*Jackson*, the Keeper. Seventeen out of Nineteen made their Escapes out of that Hole, they having only a Form there.

*Turner*. I did with these poor Souls pray heartily; none were able to pray, poor Creatures! two were dying; I prayed with them, comforted them, assisted them, and gave them five Shillings when I came out of the Hole: Now pray join with me in Prayer.

*Sir Richard Ford*. If I did think there were a Reprieve to come for you, I could be contented to spin out the Time thus; but, in good earnest, I expect none; unless you had an Apprehension, you were not to die, you would not thus run to so many Impertinencies, that, methinks, cannot fit you for Death.

*Turner*. Truly, I expect none; pray join with me in Prayer.

*Then he pray'd some Time, and Mr. Weldon, the Ordinary of Newgate, join'd with him in Prayer.*

*Mr. Ordinary*. The Lord Jesus have Mercy upon thee.

*Turner*. Mr. Sheriffs, God be with ye: Pray remember my Duty and Respects to my Lord Mayor, and to all the Aldermen, and to all their Families.

*Turner*. Executioner, I charge you meddle not with my Cloaths.

*Serjeants*. Col. *Turner*, we'll take care of them.

*Turner*. Lord, I am assured to be with thee in Glory; I do rely and depend, all in all, upon Christ: Refuse not my Soul at the last Hour, I have none in nor Heaven, none in Earth, nor any thing but thee to rely upon; and therefore into thy Hands, both now, and for ever, I commit my Soul, my Body, my Spirit, in sure and certain Hopes of a joyful Resurrection at the Day of Judgment, where I must appear and give Account for my Sins; but Jesus Christ hath washed them away in his Blood. Pray, Doctor, let me beg you to read those Verses in the second of the *Hebrews*, to comfort me, being the 14, 15, 16, 17, and 18 Verses. *Forasmuch then as the Children are Partakers of Flesh and Blood, he also himself likewise took part of the same, that through*

*Death he might destroy him that had the Power of Death, that is the Devil; and deliver them who, through fear of Death, were all their Life-time subject to Bondage. For verily he took not on him the Nature of Angels, but he took on him the Seed of Abraham; wherefore, in all Things it becometh him to be made like unto his Brethren, that he might be a merciful and faithful High-Priest, in Things pertaining to God, to make Reconciliation for the Sins of the People; for in that he himself hath suffer'd, being tempted, he is able to succour them that are tempted.*

After this, he gave Forty Shillings to a Minister, to be given to the Poor of that Parish, and Eighteen Shillings and Sixpence more, to be deliver'd to his Wife, to be given to his young Son's School-Master.

*Turner*. Mr. *Jackson*, God be with you: Remember me to my Landlord, and all there. My two Children, I hope, will be freed. Mr. Sheriff, must I hang all Day?

*Sir Richard Ford*. You will be cut down, as soon as you are dead.

*Turner*. Pray tell me true, Mr. Sheriff.

*Sir Richard Ford*. You will not hang above half an Hour.

Thereupon, he directed the Executioner to take off his Halter from his Shoulders; and afterwards taking it in his Hand, kissed it, and put it on his Neck himself: Then after he had fitted his Cap, and put it on, he went out of the Cart upon the Ladder. The Executioner tied him up, and pulling the Rope a little, says *Turner*, What, dost thou mean to choak me? Pray, Fellow, give me more Rope: What a simple Fellow is this! How long have you been Executioner, that you know not yet how to put the Knot?

*Mr. Secker*, Minister, out of a Window near. Mr. *Turner*, have you remember'd those four Things I spake to you of?

*Turner*. I have done them.

*Mr. Secker*. I trust this Hour of Heaviness will be an Hour of Happiness.

*Turner*. I am assured of it.

*Mr. Secker*. A living Christian in a dying Hour is the best of all. The Lord be with you, and the Lord carry your Soul safe thorow the Jaws of Death, to the Joys of Life.

*Turner*. I doubt not, but through a dark Cloud, I shall see a bright Saviour. Executioner, look ye, turn me not off, 'till you have the Sign from me, which shall be by laying my Right Hand on my Left Shoulder. The Lord God forgive thee, I do.

In the midst of some private Ejaculations, offering to pull down his Cap, he espied a Gentlewoman at a Window nigh, kissed his Hand, said, *Your Servant Mistress*. — His Cap being pull'd down, he lifted up his Hands, and said, *I disclaim any Desert of mine own, there is nothing in me; look upon me through Jesus Christ. Lord Jesus receive my Soul*: And thereupon giving the Sign, the Executioner turn'd him off. And after some short Time, he was cut down, and his Body convey'd to a House near, there to rest for a Space, 'till they provided for him decent Burial.

The Confluence of People from the Goal, to the Place of Execution, was very great, beyond the Memory of any upon the like Occasion.

During his Imprisonment, and to the last Breath of Life, his Carriage was very undaunted.



## NUMBER X.

*The Behaviour and Speech of Mr. JOHN TWYN, at his Execution.\**

IN the Interval, betwixt the Condemnation and Execution of *John Twyn*, diverse Applications were made to him, in order both to his Temporal and Eternal Good; and in particular, *Mr. Weldon*, the Ordinary of *Newgate*, spent much Time and Pains upon him, to convince him of that horrid Crime, for which he was to suffer; particularly pressing him to a Confession both of his Offence, and of the Author of that treasonable Piece, for which he was to die. His Answer was, That it was not his Principle to betray the Author, but it belong'd to others; whereupon, *Mr. Ordinary* demanded of him, What it was that could prevail with him to undertake the Printing of it? He said, He was a poor Man; that he had received Forty Shillings, and the Promise of a larger Sum, whereupon he undertook it; but who it was that made him that Promise, he would not discover.

*Mr. Ordinary* did likewise further urge him to a Confession of the Author, upon a Confidence, that such a Discovery might save his Life: To which he replied, That he neither could do it, nor did believe himself obliged to it, if he could; for better (says he) one suffer, than many. Being press'd to receive the blessed Sacrament, he return'd, That he was not free to do it; he was against receiving according to the Forms of this Church, and he hoped he might do well enough without it; and in this Temper he continued 'till he came to the Place of Execution, where going up the Ladder, *Mr. Sheriff* told him, That if he had any thing to say, he should remember the Cautions he had given him.

*Twyn*. I suppose this Appearance of People doth expect that I should say something as to the Matter I come here for. It is true, I come here condemn'd as a Traitor, for printing a Book, taken to be, and own'd to be, and judged to be, scandalous and seditious.

*Sir R. Ford*. And treasonable, put that in too.

*Twyn*. For my own Part, I can say this, I knew it not to be so, till I came to the Bar, to be tried; I was surprized in the doing of it, both in the Beginning, and at last, I was clear and free in my own Thoughts, as not to intend any Sedition.

*Sir R. Ford*. I would not willingly interrupt a dying Man; I told you before that you must not declare any thing in Justification, or Mitigation of so foul a Crime; but if you had any thing to say that was for the disburthening of your own Conscience, or to give any good Admonitions to the People to beware of falling into the like Crime, you should be patiently heard; but I wonder you should go about to justify yourself

in this, when you did confess both to my Brother here, and myself, after Sentence, that *that* which was pass'd upon you, was just and deserved.

*Twyn*. I do not say otherwise of it, but that it was just; but as to my Ignorance of the Matter of intending or imagining to foment and contrive any such Thing tending to such Ends, but barely for getting a little Money for my Family; I was as clear as the Child unborn of any other Design knowingly, of any such Thing, I do look upon it as a Surprizal. First, I was surprized in this Matter, by reason of that dangerous Sickness, and Weakness I was in when it was brought; I received it with my own Hands, but it was wrapt up in waft Paper, and so I deliver'd it to my Servant, he went on with it; and two or three Days after, it was taken from me by those that came to search my House, who themselves told me, they came upon Information; so that it was a Matter I was surprized with when it was brought in, by reason of my Sickness and Weakness, being unable to overlook it: And likewise as soon as it was brought in, the third Day I was discover'd in it, by some way of Information; and whether those that were the Senders of it in, might not be the Discoverers, I know not. Some Discovery was made by the Confession of those that searched my House: They came by Information, not by Chance. Then when they had taken me, I did ingenuously acknowledge and confess who I had it of; and yet for all this, the searching after those Persons concern'd was neglected that whole Day, tho' they were at home, and easy to be taken, I could prove it.

*Sir R. Ford*. *Mr. Twyn*, give me Leave to tell you once more, that I am heartily sorry you have given me the Occasion to interrupt you a second Time; all these Things you pleaded at the Bar, and said as much as you could; the Wisdom and Justice of the Bench did not think this to be a sufficient Excuse of that Treason you are found guilty of; I would ask to what End this Discourse tends; tell me your End?

*Twyn*. My End is this, and it please your Worship, to shew how ignorant and unacquainted I was with the Nature of the Thing; and how far I was in my Conscience, from intending that Treason.

*Sir R. Ford*. You say you were surprized, and that you knew not the Treason; Was it not clearly and plainly (by your own Servant) proved that you compos'd some Part of it, and printed it yourself, and corrected it? You understood *English*, or else you could not correct it; if you understood *English*, or Sense, you could not be ignorant that it was a horrid Piece of Treason,

\* This Speech should follow his Trial, in Vol. 2. p. 534.

such as no honest Man ought to see and conceal one half Hour; therefore do not justify yourself, it serves not to any Purpose here, or in the World to come: If you are not guilty of the Malice, you have the more easy Access to Comfort hereafter; but that will not help you here on Earth: Pray spend that little Time you have to some better Purpose than this; if you have any thing to say that may become a modest Man to say, we are willing to hear it: If you can remember any Person that assisted you in correcting it, or otherwise were concern'd in it, say it.

*Twyn.* No Person assisted me, I corrected it not; it was carried out of my House to correct, and brought in corrected.

*Sir R. Ford.* You shall not say that you are denied that Christian Liberty a dying Man ought to have; we are not to suffer any Reflections on this Business, you had a fair Trial: I say, we would not deprive you of your Liberty of speaking, but do not abuse that Liberty that is given you, by spending your Time impertinently, and fruitlessly; but if you have any thing further to offer to God, which is more for your Good, go to that.

*Twyn.* I shall forbear to insist any further, as to the Narration of that Matter; I shall be very unwilling and tender of reflecting any thing upon the King, or the Government, or give Offence to your Worships any way.

*Sir R. Ford.* Nothing but that shall offend us.

*Twyn.* I shall go to Prayer.

*Sir R. Ford.* Do, do, we will join with you, and pray for you.

He continued in private Prayer on the Ladder some Time.

*Sir R. Ford.* Executioner, do not turn him off, 'till he has given you a Sign.

*Mr. Ordinary of Newgate.* *Mr. Twyn,* give a Sign to the Executioner, when you have done; you must not throw yourself off, you will be your own Executioner in that.

*Twyn.* Executioner, when I give you the Sign, by pulling you by the Shoe, then turn me off.

*Executioner.* I will, I will, the Lord bless thy poor Soul.

Afterwards, the Executioner coming down, *Mr. Twyn* told him, the Sign should be by moving his Foot.

*Twyn.* O Lord, bear the Prayer of thy poor Servant, receive me into thy Mercy. Lord, in thee I believe, receive my Spirit; Lord Jesus! let my Prayers be acceptable in thy Sight: O Lord, my Strength, and my Redeemer; O Lord, I beseech thee, receive me into the Arms of thy Mercy; let me have an Inheritance with thee, to live with thee for ever, and then come, Lord Jesus! come quickly.

Then giving the Sign, the Executioner did his Office; and being cut down, his Head was sever'd from his Body, and his Body divided into four Quarters, which are to be disposed of as the King shall assign; since which Time, his Head is placed over Ludgate, and his Quarters upon Aldersgate, and other Gates of the City.

*It will be here convenient to make Two Observations upon the Words of the Prisoner.*

FIRST, he says, That the Proofs were sent out of his House to be corrected, and brought back again corrected, and so not corrected by himself; which is not only contrary to what he formerly own'd, as was made out by several Proofs at his Trial, concerning his own correcting of it, but to his solemn Declaration at the Bar, avowing, that he knew nothing more of the Business than what he there deliver'd: For, supposing such a Confession, the next Question would infallibly have been, To whom was it carried? or, Who corrected it? as the readiest Way to the Discovery of the Author.

Secondly, he says, That the Persons concern'd (meaning *Calvert*, and her Maid) were neglected that whole Day, being at Home, and easy to be taken, which is disproved, both by his own Servant, and *Mrs. Calvert's*: And likewise proved, on the other Side, That if he himself would have order'd his Apprentice to have look'd after the Maid, (as he promised, and was directed,) she had been secured that very Morning; the Fellow meeting her in *St. Bartholomew's Close*, within a Quarter of an Hour after his Master was carried away, not knowing that she had any Concern in the Business. As to the Mistress herself, she is, at present, under Custody.

## NUMBER XI.

### *The Earl of CLARENDON's Vindication of himself against the Articles of Treason exhibited against him in Parliament.\**

*Mr. Seymour's SPEECH to the House of Lords.*

*My Lords,*

“THE Commons Assembled in Parliament, having received Information of divers treasonable Practices and Designs of a great Peer of this House, (*Edward Earl*

“of *Clarendon*) commanded me to accuse the  
“said *Edward Earl of Clarendon* of Treason,  
“and other Crimes and Misdemeanors; and I  
“do here in their Names, and in the Names of  
“the Commons of *England*, accuse *Edward Earl*  
“of *Clarendon* of Treason, and other high Crimes  
“and Misdemeanors. I am further commanded

\* This Vindication should be read after the Proceedings against the Earl of *Clarendon*, in Vol. 2. p. 580.

“ by



" by the House of Commons, to desire your Lordships, That the Earl of Clarendon may forthwith be sequestred from Parliament, and be committed to safe Custody. They further command me to acquaint your Lordships, That they will in convenient Time exhibit the Articles of the Charge against him.

November 14, 1667. The Vote of the House of Lords.

Resolved, &c.

" *That the Lords have not complied with the Desire of the House of Commons, concerning the Commitment of the Earl of Clarendon, and sequestering him from Parliament; because the House of Commons have only accused him of Treason in general, and have not assign'd or specified any particular Treason.*

ARTICLES of Treason exhibited in Parliament against Edward Earl of Clarendon.

I. " **T**HAT the Earl of Clarendon hath designed a Standing Army to be raised, and to govern the Kingdom thereby; advising the King to dissolve the present Parliament; to lay aside all Thoughts of Parliaments for the future; to govern by Military Power, and to maintain the same by Free Quarter and Contribution.

II. " That he hath, in hearing of many of his Majesty's Subjects, falsely and seditiously said, The King was in his Heart a Papist, Popishly affected, or Words to that Effect.

III. " That he hath received great Sums of Money for passing the *Canary* Patent, and other illegal Patents; and granted several Injunctions to stop Proceedings at Law against them, and other illegal Patents formerly granted.

IV. " That he hath advised and procured divers of his Majesty's Subjects to be Imprisoned against Law, in remote Islands, Garrisons, and other Places, thereby to prevent them from the Benefit of the Law; and to introduce Precedents for Imprisoning of other of his Majesty's Subjects in like Manner.

V. " That he hath corruptly sold several Offices, contrary to Law.

VI. That he hath procured his Majesty's Customs to be Farmed at under Rates, knowing the same; and great pretended Debts to be paid by his Majesty, to the Payment whereof his Majesty was not in Strictness bound: And hath received great Sums of Money for procuring the same.

VII. " That he hath received great Sums of Money from the Company of *Vintners*, or some of them, or their Agents, for enhancing the Prices of Wine, and for freeing them from the Payment of legal Penalties which they had incurred.

VIII. " That he hath in a short Time gained to himself a far greater Estate than can be imagined to be lawfully gained in so short a Time: And contrary to his Oath, hath procured several Grants under the Great Seal from his Majesty, to himself and Relations, of several of his Majesty's Lands, Hereditaments, and Leases, to the Dis-profit of his Majesty.

IX. " That he introduced an Arbitrary Government in his Majesty's foreign Plantations; and hath caused such as complain'd thereof, before his Majesty and Council, to be long imprisoned for so doing.

X. " That he did reject and frustrate a Proposal and Undertaking, approved by his Majesty, for the Preservation of *Nevis* and *St. Christopher's*, and reducing the *French* Plantations to his Majesty's Obedience, after the Commissions were drawn for that Purpose; which was the Occasion of such great Losses and Damages in those Parts.

XI. " That he advised and effected the Sale of *Dunkirk* to the *French* King, being Part of his Majesty's Dominions, together with the Ammunition, Artillery, and all Sorts of Stores there, and for no greater Value than the said Ammunition, Artillery, and Stores were worth.

XII. " That the said Earl did unduly cause his Majesty's Letters Patents under the Great Seal of *England* (to one *Dr. Cronister*) to be altered, and the Inrollment thereof to be unduly razed.

XIII. " That he hath, in an arbitrary Way, examined and drawn into Question divers of his Majesty's Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties; determined thereof at the Council-Table, and stopped Proceedings at Law; and threatened some that pleaded the Statute of 17 *Car. 1.*

XIV. " That he had caused *Quo Warranto's* to be issued out against most of the Corporations of *England* by Act of Parliament, to the Intent he might receive great Sums of Money from them for Renewing their Charters; which when they complied withal, he caused the said *Quo Warranto's* to be discharged, and Prosecution thereon to cease.

XV. " That he procured the Bills of Settlement for *Ireland*, and received great Sums of Money for the same in a most corrupt and unlawful Manner.

XVI. " That he hath deluded his Majesty and the Nation, in all foreign Treaties and Negotiations relating to the late War.

XVII. " That he was a principal Author of that fatal Counsel of dividing the Fleet, about *June 1666.*

\* THE first Charge, then, that is printed against me, is, *That the Earl of Clarendon hath designed a Standing Army to be raised, and to govern*

*Montpelier, July 24, 1668.*

\* As nothing could be more surprising to me, nor I think to any Man else, than to find myself, after near Thirty Years Service of the Crown in the highest Trust; after having passed all the Time of his Majesty's Exile with him beyond the Seas, and in his Service, and in which the indefatigable Pains I took was notorious to many Nations; and after I had the Honour and Happiness to return again with his Majesty into *England*, and to receive from him so many eminent Marks of his Favour, and to serve him near Eight Years after his Return, in the Place of the greatest Trust, without ever having discover'd that his Majesty was offended with me, or, in Truth, that he had ever the least ill Success from any Counsel I had ever given him; or that any Persons of Honour and Reputation, or Interest in the Nation, had ever made the least Complaint against me, or had any Thought that the Miscarriages (for Miscarriages were enough spoken of) had proceeded from me, or any Advice of mine: I say, as after all this I could not but be exceedingly surpris'd, to find myself on a sudden, when I had not the least Imagination of it, bereft of the King's Favour; and fallen so far from his Kindness, even within three or four Days after his Majesty had vouchsafed to condole with me in my House for the Death of my Wife, that he resolv'd to take the Great Seal from me: So it was no small Comfort to me, to see and know, that very few Men of Honour or Reputation approved or liked

*vern the Kingdom thereby; advised the King to dissolve the present Parliament; to lay aside all Thoughts of Parliaments for the future; to govern by Military Power, and to maintain the same by free Quarter and Contribution.*

It is no great Vanity to believe, that there is not one Person in *England*, of any Quality, to whom I am in any Degree known, who believes me guilty of this Charge; and I want not a Cloud of Witnesses, (besides the Testimony that I hope his Majesty himself will vouchsafe to give me in this Particular) who from all they have heard me say in Council, and in Conversation, can vindicate me from this odious Opinion. Having had the Honour, by the special Command of his late Majesty of blessed Memory, to attend the Prince, his now Majesty, into the Parts beyond the Seas, and to be always with him and in his Service these many Years of his Exile, and till his happy Return; I always endeavoured to imprint in his Majesty's Mind an Affection, Esteem and Reverence for the Laws of the Land; without the trampling of which under Foot himself could not have been oppress'd; and by the Vindication and Support of them, he could only hope and expect Honour and Security to the Crown. Upon this Foundation and declared Judgment, I came into the Service of his Father, by opposing all illegal and irregular Proceedings in Parliament; and I never swerved from that Rule in my Advice and Counsel to him or his Son. From the Time of his Majesty's happy Return from beyond the Seas, I took nothing so much at Heart as the Establishment of the due Administration of Justice throughout the Kingdom, according to the known Laws of the Land, as the best Expedient I could think of for the composing the general Distempers of the Nation, and uniting the Hearts of the People in a true Obedience to, and Reverence for his Majesty's Person and Government. And with what Success I served his Majesty in this Province, (which he was pleas'd principally to commit to my Care and Trust) I must appeal to the whole Nation; and whether the oldest Man can remember, that in the best Times Justice was ever more equally administred, and with less Complaint and Murmur; which hath been frequently acknowledged

from all the Parts of the Kingdom, and been often taken Notice of by the King himself with great Approbation, and confess'd by most of the Nobility upon several Occasions. I have often declared in Parliament the King's Affection and Reverence for the Laws, and his Resolution neither to swerve from them himself, nor to suffer any body else to do so: And upon the publick Occasions of swearing the Judges in any Courts, I always enjoin'd them to be very strict and precise in the Administration of Justice according to Law, with all Equality, and without Respect of Persons, which the King expected from them; and that as he resolv'd never to interpose by Message or Letter for the Advancement or Favour of any Man's Right or Title, so he would take it very ill if any Subject (how great soever) should be able to pervert them: And I do believe there have never pass'd so many Years together in any Age, in which the Crown hath not in the least Degree interposed in any Cause or Title depending in *Westminster-Hall*, to incline the Court to this or that Side; or in which the Crown itself hath had so many Causes judg'd against it in several Courts; at least in which former Practice and Usage on the Behalf of the Crown hath been less followed: And nothing is more known, than that from the Time of the King's blessed Return into *England*, even to the Preparation of this Charge against me, I was reproach'd with nothing so much as too much adhering to the Law, and subjecting all Persons to it; and this Reproach hath not been cast upon me by any so bitterly and maliciously, and in Places where they thought it might produce most Prejudice to me, as by those who now contrived this Charge, and who have always been great Enemies to the Law.

All this, and much more of this kind, is manifest to all the World; and therefore I need not labour more in this Vindication. Yet I cannot but observe, that there is not in all the King's Forces, nor was not when his Forces were then much greater, one Officer recommended by me; and most of them such who profess'd publicly a great Animosity against me; having been, by the Malice of some Men, very unreasonably persuaded that I was their Enemy; that I desired

liked what was done; but that the same was contrived, pursued, and brought to pass by Men and Women of no Credit in the Nation; by Men, who had never served his Majesty or his blessed Father eminently or usefully, but most of them of Trust and Credit under *Cromwell*, or never of Credit to do him the least Service; and who were only angry with me, for not being pleas'd with their vicious and debauch'd Lives, or for opposing or dissuading their loose and unreasonable Counsels, which they were every Day audaciously administering in Matters of the highest Moment, with great Licence and Presumption. But, above all, it was of the highest Consolation to me, when it was publicly and industriously declared, that the King was firmly resolv'd to destroy me, and would take it very well from all Men who would contribute thereunto, by bringing in any Charge or Accusation against me; when the most notorious Enemies I had, were the only Persons trusted in Employment; Men who had most eminently serv'd and maliciously traduced the King, and been to that Time look'd upon as such by his Majesty; and all who were believ'd to have Kindness for me, were discountenanced; when Men of all Conditions and Degrees were daily sollicit'd and importuned, by Promises and Threats, to declare themselves against me, at least if they would not be wrought over to do any thing against their Consciences, that they absent themselves from those Debates; that all this Malice and Conspiracy, with so long Deliberation and Consultation, should not be able at best to produce and exhibit any other Charge and Accusation against me, but such a one, as most Men who knew me, or had any Trust and Employment in the Publick Affairs, were well able to vindicate me from the Guilt of, and even my Enemies themselves did not believe: The Particulars whereof (as far as I can take Notice of them, they having not to this Day been reduced into any Form, so much as in the *House of Commons* itself) I shall now examine; and if I shall appear too tedious in the Examination and Disquisition of them, and to say more than is necessary for my own Defence, and to mention many particular Persons in another Manner than is usual upon Occasions of this Kind; I desire it may be remembered and considered, that this is not written as a formal Answer to an Impeachment, nor like to be published in my Life-time; a Judgment of Banishment being pass'd against me (without the least Proof made, or offer'd, for the making good any one Article of Treason or Misdemeanour) by Act of Parliament; but is a Debt due to my Children and Posterity, that they may know (how much soever they are or may be involved in the Effects of the sharp Malice against me) how far I am from any Guilt of those odious Crimes which have been so odiously laid to my Charge. And this being my End, I may be excus'd if I so far enlarge upon all Particulars, that it may be manifest unto them how far I have been from treading in those Paths, or having been accessary to those Counsels, which have been the Source from which any of those bitter Waters have flow'd, which have corrupted the Taste even almost of the whole Nation. And in order to this so necessary Discourse and Vindication of my Integrity and Honour, I can only take Notice of the printed Paper of my Charge, all other Correspondence and Communication being so strictly inhibited to all kind of Men to hold any Commerce with me, except my Children and menial Servants, who only have Liberty to write to me of my own Domestick Affairs, and the Letters they write and receive being to be first communicated to one of the Secretaries of State. *Earl of Clarendon's Letter.*



that they might be disbanded; at least so obliged to the Rules of Law, that they should be every Day cast into Prison; and they had indeed found that in some Insolencies they had committed against the Law, and some Pretences they had made to Privileges against Arrests, and the like, that I had always opposed their Desires. So that it is not probable that I should contribute my Advice for the raising a Standing Army, and that the Kingdom should be governed thereby, when there were very few Men so like to be destroyed by that Army as myself.

There is another Part of this Article, how improbable and impossible soever, which in many Respects will require a more ample Discourse and Defence: That I advised the King to dissolve the present Parliament; to lay aside all Thoughts of Parliaments for the future, to govern by Military Power, and to maintain the same by free Quarter and Contribution. Which Particulars, so compounded and put together, and solemnly undertaken to be proved, even by two Privy-Counsellors, who pretended to be present at the Debate, was in Truth the Foundation of the great Prejudice that was raised against me; and which, tho' known to be false to the Persons who dispersed it, and appeared very impossible to all Men who had but an indifferent good Opinion of my Integrity or Discretion; yet the Manner of the Insinuation, and the Circumstances with which it was related, and the private Intimation from some Privy-Counsellors that they would prove it, got so much Credit in the House of Commons, that they thought fit to make it a Part of my Charge; and therefore it will be necessary to set out a clear Narrative of that whole Debate, upon some Particulars whereof those Informers, against their Oath, and against all kind of Ingenuity, have grounded their Insinuation, and direct (tho' hitherto secret) Information: All the Particulars whereof are so well known to several Persons of Honour who were present, that I could never have doubted, if the Matter had ever been brought to a public Examination, I should have received an ample Vindication; and, in Truth, that the Informers themselves, how confidently soever they had undertaken it, would never have justified their Accusation.

At the last Recess of the Parliament it had been prorogued to the tenth of *October* following. I being at that time indisposed with the Gout, and so not able to be present. About the beginning of *June* (the Treaty being then begun at *Breda*) the *Dutch* Fleet, under the Command of *De Rutter*, came upon our Coast, and seemed to be bound for the River of *Thames*, which caused a general Terror in *Kent*; upon which, Lieutenant-General *Middleton* was suddenly sent down thither to draw the Train-bands together, in order to which he convened them to *Rocheſter*: The Fortifications at *Sheerness* (which the King believed to have been made defensible, having himself made a Journey thither in the Winter, and charged the Commissioners for the Ordnance for the Prosecution of it, who no Doubt failed much in the Execution of his Commands) were found so weak, and so utterly untenable, that upon the Approach of the *Dutch* Fleet, the Soldiers who were in it (who were very good experienced Men, and under excellent Officers) were by their Cannon forced to quit it, and the *Dutch* presently landed upon it, and seemed to

have a Resolution of fortifying it: Upon the News whereof, and of the general Distraction in that Country, the Duke of *Albemarle* was sent down to *Chatbam*, with such Troops of Horse and Foot as could speedily be drawn together of the Regiments of Guards, and such of the Train-bands of the neighbour Countries as could be persuaded to march. Upon the General's Arrival at *Chatbam*, he writ very chearful and confident Letters, that he had no Fear of the *Dutch*, if they should make any Attempt, which he was confident they durst not do; and that he had put a Chain over the River, which would stop their Ships from coming up: However, the next Day, being the twelfth of *June*, the *Dutch* Fleet advanced, having without the least Difficulty broken the Chain, and shortly after taken and burned two or three of the greatest Ships of the Royal Navy (which had been very negligently left there, and might well have been brought into Security) and six or seven Merchant Ships, whereof some were Outward-bound with Merchandize; all Things being in so great Distraction at *Chatbam*, and thereabouts, that nothing was done that was naturally to be expected from an experienced Commander, who had excellent Officers with him, ready to obey his Orders.

The Noise of this quickly filled the City of *London*; and yet the Confusion there was not so great as in the Court itself, where they who had most advanced the War, and reproached those who were against it, as Men who were not solicitous for the Honour of the Nation, and who never spoke of the *Dutch* but with Contempt, and that they should be cudgelled, were the most dejected Men that can be imagined, speaking very bitterly against those who had advanced the War: And truly the Distraction was so great in Court and City, as if an Army of a hundred thousand Men had encompassed it; and though the *Dutch* Fleet returned out of the *Thames*, and advanced no farther than *Chatbam*, yet it remained still upon the Coast, and landed about *Harwich*, and attempted the Castle of *Langborne-Point*, and kept the Counties of *Essex*, *Norfolk*, and *Suffolk*, in perpetual Alarm for many Days: The Train-bands which had been drawn together, pretended that the Time was expired that they were obliged to maintain themselves; and therefore required Pay, or Liberty to depart, though the Enemy was in View, and themselves like to be made the first Prey. The Regiments which had been raised without Charge to the King, upon the Interest of several Persons of Honour and great Reputation, had upon the first Musters received one Month's Pay; but that Time was expired, and they must either receive another Pay, or take free Quarter upon the Country, which the Time would not bear. In this Perplexity, some Persons had advised the King to summon the Parliament to convene upon a short Day, notwithstanding it stood prorogued till *October*. And when his Majesty asked my Opinion of it, I told him I thought it could not be done; I was sure it never had been done. To which his Majesty replied, That he was assured by many that he might do it, and named Mr. *Prym* to be of that Opinion. Shortly after his Majesty appointed the whole Council to meet upon the Debate, of which I knew nothing till I came into the Room: The King himself told

us what we were to debate upon; that we all saw the Straits we were in, the general Distemper of the Nation, the Insolence of the Enemy; that there was a Necessity of having an Army; that he had no Money, nor knew where to get any, nor could imagine any other Way to provide against the Inconveniencies which were in View, than by calling the Parliament; of which and any other Expedient he would receive our Advice; expressing so much of his own Sense, that it was plain enough that he inclined to that Remedy: Upon which three or four of those who sat at the lower End of the Table, and who were known to have contrived the Counsel, expressed themselves at large; seemed very confident that it might lawfully be done; that no other Way could be found to raise Money; that Men could not be kept together without Money; and desired that they who were of another Opinion would propose some other Counsel. I do not deny, their Reasons did in no degree satisfy me; and though I knew very well that the Resolution was upon the Matter already taken, that there was a great Desire in some Men (whose Malice to me was enough known) to lead me into some Expressions of which they might take Advantage; yet the Obligation of my Oath to deliver myself freely, the conceived Security of that Place, and the Opinion that the Thing proposed was not reasonable, and would produce many Inconveniencies to the King's Service, prevailed with me to discharge my own Conscience, God knows, according to the best of my Understanding: I said, I knew well the Disadvantage upon which I spoke in so tender a Point, and too impopular a Thing it was to be against the convening of the Parliament in a Time of so great Straits, when no other Remedy could be found; yet that appearing to me not practicable, I thought it ought not to be embraced: That it was confessed by all hands, that in the Point of Law, the convening them before the Time to which they were adjourned, was at least very doubtful; and to me, upon all the Disquisition I could make, it was very clear that it could not be done; that the Temper of both Houses was well known; and it could not but be presumed, that when they came together, the first Debate they would fall upon would be of the Manner of their coming, and whether they were in a Capacity to act; and I doubted very much, that there would be very few who would be willing to pass an Act of Parliament in so doubtful a Season; and then if their Meeting was only to confer, when they might say any thing, and conclude nothing, I thought it well worth the considering, whether in so general a Distemper, such an Assembly might not interrupt all other Consultations and Expedients, and yet propose none, and so encrease the Confusion: I said, If the Necessities were so urgent, that it was necessary to have a Parliament convened, and that they could not lawfully re-assemble that which was prorogued till the Day to which it was prorogued, as I was confident it could not be, there could be no Doubt but that it was in the King's Power to dissolve that Parliament, and forthwith issue out Writs for the calling another Parliament which might regularly be assembled more than a Month before the prorogued Parliament could meet. And there were many more of the Council of the same Mind, that

it would be best to dissolve the Parliament, and to call another. Many declared themselves against this at Expedient; professing, that though there had at some Times appeared many ill-Humours and Misapprehensions in the House of Commons; yet that they were very right, in the main, for the King's Service; and that there is no Hope ever to see another House so well constituted for Church and State; and the King himself seemed to have the same Opinion, and no Inclination to dissolve it; and so resumed the former Debate; What was to be done for the present to raise Money, or to maintain his Army, if he should not call the Parliament to meet before the Day. The old Argument, That there could no other Way be found out, was urged; and calling with more than usual Earnestness in that Place, that they who were of another Opinion would propose their Expedient, the King himself, with some Quickness, asked me what I would advise? To which I replied, That if in Truth that which was proposed was in the Nature of it not practicable, and being practised could not attain the Effect; it ought to be laid aside, though another could not for the present be proposed; that I thought it clear, that the Parliament could not be assembled in less than twenty Days; and that if they were met, and believed themselves lawfully qualified to grant a Supply of Money, we all know the Formality of that Transaction would require so much Time, that Money could not be raised soon enough thereby to raise an Army, or maintain that Part of it which was raised to prevent the landing of an Enemy which was already upon the Coast, and (as many thought) ready every Day to make their Descent; and yet the sending out a Proclamation for re-assembling the Parliament, would inevitably put an End to all our Councils; that, for my part, I believed the *Dutch* had satisfied themselves with the Affront they had given us, and had no Thought of proceeding farther; that they could not have Men enough on board to make any Descent, without our having Notice of it; and that the King had all possible Security from the King of *France*, that he had no such Intention, and then it would not be in the Power of the *Dutch*, with their own Strength, to give us any Trouble: However, for the present Support of those Troops which were to guard the Coasts, since Money could not be found for their present constant Pay, without which free Quarter could not be avoided, the only Way that appeared to be practicable, and to avoid the last Evil, would be to write Letters to the Lieutenants and Deputy-Lieutenants of those Counties where the Troops were obliged to remain, that they would cause Provisions of all Kinds to be brought into their Quarters, that so the Soldiers might not be compelled to straggle to provide for their own Victuals, which would end in the worst kind of free Quarter; and that the like Letters might be written to the neighbour Counties, wherein no Soldiers were quartered, to raise Money by way of Contribution, as had heretofore been done, that so the Troops might be enabled to stay, and continue in the Posture they were in, for Defence of the Kingdom, in which those other Counties had their Share of the Benefit, and without which they must themselves be exposed to the Disorder of their own Soldiers, or to the Invasion of the Enemy upon their Retreat, or to both: And it



is possible, that in the Earnestness of this Debate; and the frequent Interruptions which were given; I might use that Expression of raising Contribution, as had been done in the late Civil War; but how, from such a Debate; in such a Place; and with such Circumstances, every Particular whereof will be justified by many Lords of the Council, who were then present, can naturally be formed any Conclusion, or in truth any reasonable Imagination, that I have designed a Standing Army to govern the Kingdom by, advised the King to dissolve the present Parliament, to lay aside all Thoughts of Parliaments for the future, to govern by military Power, and to maintain the same by free Quarter and Contribution, I must and am very willing to refer and submit to the impartial Judgment of the Parliament, and of all discerning Men.

The second Article is, *That I have, in the Hearing of many of his Majesty's Subjects, falsely and seditiously said, The King was in his Heart a Papist, Popishly affected, or Words to that Effect.*

I have Occasion too often, throughout this whole Charge, to acknowledge and magnify the great Goodness of God Almighty, that since he thought not fit (for my greater Humiliation, and it may be to correct the Pride of a good Conscience) to preserve me entirely from those Aspersions of Infamy, and those *Flagella Linguae*, those Strokes of the Tongue, which always leave some Mark or Scar in the Reputation they desire to wound, that he hath yet infused into the Hearts of my Enemies, who suggested and contrived this Prosecution against me, to lay such Crimes to my Charge, as my Nature is known most to abhor, and which cannot only not be believed, but must be contradicted, and a Vindication of me from that Guilt must be made, by all Men who know me to any degree, or have been much in my Company; and as Justice would have required it, so the usual Form in Cases of this kind doth exact, that in so general a Charge they should have named one single Person of those many in whose Hearing I have laid that odious Imputation upon the King; and every Man will presume, that one such Person would have been named, if he could have been found. There is no Man now alive, who hath had the Honour to be so many Years about or near the Person of the King, as I have been; no Man who knows more the Temptations he hath undergone, and the Assaults he hath sustained, in the Matter of his Religion, during the whole Time of his Exile, when almost a total Despair possessed the Spirits of most Men of his own Religion, that he would ever recover his Regality; and the Hopes, and Promises, and Assurances, were so pregnant, of very many of all Conditions, that he should suddenly recover if he would change it: No Man knows so well, with what Christian Courage he repelled those Assaults, or with what pious Contempt and Indignation he resisted and rejected those Temptations; nor hath any Man (I think) held more Discourses with his Majesty concerning Religion, and sooner and more clearly discerned the Reproaches he would undergo, from that innate Candour in his Princely Nature, which disposed him to receive any Addresses, or hear any Discourses, which those of several Factions in Religion, with great Presumption, have

used to present to him; whilst his Majesty hath, with equal Temper, and singular Benignity, heard all; and pitying their Errors, dismissed them with Evidence, that their Arguments were too weak to make Impression in his Judgment; which though they knew well, yet either Party, out of the Vanity of their Hearts, used all the Endeavours they could to get it believed that the King was propitious to them and their Party; and the Papists, being most presumptuous in particular, and in their dark Walks in their several Counties making it a special Argument to their Profelytes, and those they endeavoured to make so, that the King favoured them, and was of their Religion in his Heart; of which, and the great Prejudice it brought to his Majesty, I frequently received Advertisements from many Persons of Honour, and of warm Affections to the Government; of which I always informed the King, who was exceedingly offended at their Folly and Presumption, and wished that some of them might be apprehended, and prosecuted with the utmost Rigour, and that some such Prosecution might be made against all the Roman Catholics, that they might all be convicted; which I always gave in Charge to the Judges accordingly; and upon that and the like Occasions had a just and necessary Opportunity to enlarge in the Presence of many Persons of Honour and Interest in the Kingdom upon the Sincerity of the King's Religion, and his constant Exercise of it when he suffered by it; giving such Instances of many Particulars as were pertinent to the Discourse. Of which Endeavours of mine, and of some Fruit thereof, I doubt not but that many of as considerable Persons as are in England will be ready to give me their Testimony: And I may without Vanity say, that I had more than a common Part in the framing and promoting that Act of Parliament, that hath made those seditious Discourses, of the King's being a Papist in his Heart, or popishly affected, so very penal as it is; and therefore there is need of an undoubted and uncontrollable Evidence, that I did so soon run into that Crime myself; which is all I shall for the present say upon the second Article.

The third Article is, *That I have received great Sums of Money for passing the Canary Patent, and other illegal Patents; and granted several Injunctions to stop Proceedings at Law against them, and other illegal Patents formerly granted.*

I did presume in my humble Address to the House of Peers to assure their Lordships, that I never received one Penny over and above the just Perquisites of my Office, according to the Precedent and Practice of the best Times; which I conceived to be those of my Lord *Coven*try and my Lord *Elmesmore*, and which I had made my Rule in all that I had received, except only what I had from the immediate Bounty of the King. And as I did always all that was in my Power to prevent and stop all illegal Patents; so I believe there are more found in the Office stopped by me than by any of my Predecessors in so long Time: But since the *Canary Patent* hath made so much Discourse to my Reproach, I shall enlarge upon it, and set down very punctually all the Proceedings I know in that Affair: By which both the Reasonableness and Justice of that Grant will appear

pear, and my Innocence and Unconcernment in it.

About the first *Christmas* after the King's Return into *England*, the Lord Treasurer, the Lord Privy-Seal, myself, and the two Chief Justices (being the Persons appointed by the Statute for that Service) met together to set the several Prices upon the several Wines; and were attended, according to Custom, by the Company of Vintners, and the chief Merchants in the City who traded in that Merchandize; and being first to limit the Merchants to a reasonable Rate, before we could set any Price to the Vintner upon the Retale, we found, by the best Enquiry we could make, that the first Prices beyond the Seas which the Merchants paid for their Wine were so excessive, that the Retale could not be brought within any Compass; and that since the Beginning of the Troubles the Price of Wine in general was exceedingly increased, and particularly that of the *Canaries* was almost double to what it had been in the Year 1640. I knew very well, by the Correspondence I had held in the *Canaries*, (during the Time I had served his Majesty as his Ambassador in *Spain*) that the whole Trade of *Canary* Wines was driven solely by the *English*, and the Commodity entirely vented in the King's Dominion, all *Christendom* beside not spending five Pipes of *Canary* Wine; and therefore I asked the Merchants, what would be the Way to remedy that Mischief, and whether what I had reported was not true? They confessed it to be very true, and that it was a Reproach to our Nation to be so much imposed upon in a Trade that we might govern ourselves; and that the unreasonable Prices of the Wine was not the greatest Prejudice that was befallen that Trade: That before the Troubles they had been so far from employing any Stock of Money, that they sent their Ships fully laden with all Commodities thither, which yielded very good Markets, being sent from thence to the *West-Indies* in their Plate Fleets; that the very Pipe-Staves they carried did very near discharge the Value of the Wine, so that they brought home the Proceed of their other Commodities, either in Pieces of Eight, or such other Merchandize as had been brought thither from the *Indies*, and upon which they received great Profit: That, on the contrary, the Trade is now wholly driven by ready Money; that the Commodities they send thither will not be taken off, except at their own Prices; so that they have for the late Years sent their Vessels empty thither, except only with some few Pipe-Staves, which, by the Destruction in *Ireland*, they cannot send in any great Proportion from hence; and their Ships return from thence with no other Lading but those Wines, which they pay for in ready Money, either with Pieces of Eight sent in their Ships from hence, or by Bills of Exchange charged upon some known Merchants in *Spain*; that over and above this, they had of late set new Duties upon the Wine, and laid other Impositions upon the Merchants, than the *English* Nation hath been ever accustomed to: They said, that all this proceeded from the immoderate Appetite we have for that sort of Wine, and therefore we take from them as much as they can make, and from our own Disorder and Irregularity in buying them, in contending who shall get the most; and so raising the Prices one upon

another, and making the *Spaniards* themselves Judges what we shall pay. My Lords, upon Consultation amongst themselves, found the Matter too hard for them, and that the Reformation of so much Evil must be done by degrees; and upon a Representation of all the Difficulties to his Majesty and his Privy-Council, whose Wisdom could only provide a Remedy proportionable to the Mischiefs; for the present, as they were resolved not to raise the present Prices at which the Wine was bought and sold (which they believed, how reasonable soever, would be very unpopular) so they thought it very unjust to draw down or abate those Prices, since it appeared to them that the Wines cost more in Proportion upon the Places of their Growth: They declared therefore to the Merchants and the Vintners, that though for the present they would permit the same Prices to continue for the next Year, which they had been sold for the present Year, and which indeed were confirmed by the Act of Parliament, they should hereafter take care what Markets they made; for that they were resolved the next Year to make the Prices much lower, both to the Merchant and the Vintner: And upon the Report made of the whole Matter to the King in Council, a Proclamation was published accordingly.

The next Year both the Merchants and Vintners were very earnest Suitors, that greater Prices might be allowed; or, at least, that the same might be continued; making it very evident that their Wines cost them more than they had done the Year before. Upon the Debate the *Canary* Merchants were much divided; some of them insisting very importunately to have the Prices raised, because it was notorious that they had paid much more, by reason, as they said, that the Vintage had not yielded near the Proportion that it used to do; others, though confessing the Encrease of Price, yet pretending a more publick Spirit, and the Necessity of a Reformation, pressed earnestly that the Price might not be raised, but that they might be permitted to take what they had done already for this Year. It was quickly perceived whence this Moderation proceeded, and that the last Proposers had a great Quantity of Wine upon their Hands, which had been provided the Year before, and so might well be sold at those Prices; but that the former had no Old left upon their Hands, but were supplied with a full Provision of New, which had cost them so much dearer. Both the one and the other desired us, that whatever Resolution we took for the present, a Clause might be inserted in the Proclamation, that the next Year after *Canary* Wine should not be sold for above Twenty four Pounds the Pipe, and that every Year after it should be drawn lower, as it might well be, it having been sold in the Year 1640 for Twenty Pounds; though his Majesty found it, at his Return, permitted to be sold at Six and thirty: Such a Clause, they said, would give Notice to the Islanders, and oblige them to sell their Wine at more reasonable Rates, and render the Merchants unexcusable, if they should give greater. My Lords, notwithstanding all the Allegations, thought fit to bring the Prices of all Wines lower, which they did, as the most effectual Warning for the future; but by his Majesty's Approbation, that Clause was inserted in the Proclamation as they desired.



The Year following, when the Lords met again according to Custom (which is, as hath been said, about *Christmas*) they found not the least Reformation; on the contrary, that the *Canary* Merchants had paid dearer than ever, which made them all more solicitous to have the Price raised, and the Vintners as importunate for their Retale. And indeed the Vintners were in a much worse Condition than the Merchants, they making it appear that they paid the Merchants much dearer, without which they could get no Wine, and so must give over their House-keeping; that the Penalty upon the Merchant was very small, being not above Forty Shillings a Pipe, and the Crime not easy to be discovered, as was manifest by there being not one Merchant questioned in many Years for that Transgression; whereas, on the contrary, the Penalty upon the Vintners was very severe, and so easily discovered by any Man who went to a Tavern and would be an Informer, that most of the Vintners in *London* were then sued in the *Exchequer* upon those Penalties, which if exacted must produce their present Ruin. The Merchants excuse themselves for their present Pretence, and for their having given more than was lawful for them to have done, by their own Desire, that they had done their best, and that the greatest Traders amongst them had consented not to suffer the Prices to be raised upon them, but that they found it ineffectual; and that though they should give over their Trades, it would produce no Reformation; that the Trade was open to all Adventurers, and that there had been many Ships sent from *England* that very Year by *Jews* and other Traders, who had never before traded to the *Canaries*; inasmuch as when they who had been long bred up to the Trade, and had been long Factors in those Islands, sent their Ships thither, they found other *English* Ships there, and the Wines bought at a greater Price than they had allowed their Factors to give; so that they must either have their Ships return empty and unladen, or take the Wines at the Prices other Men gave; that they had chosen the latter, as well to continue the Trade, as to draw home some Part of the Stock they had in that Country; that they could imagine but two Ways to reform that Excess; the one, by putting the Trade in such a Method, and under such Laws, as might restrain that Licence, and not leave it in the Power of Persons who never had been in the Trade to give Law to it; and by this means the Islanders would find it necessary to set reasonable Prices upon their Commodities, and to yield such other Advantages and Privileges to the Merchants as they had heretofore enjoyed; the other, that the King would by his Proclamation prohibit the Importation of any *Canary* Wines into his Dominions; and hereby he would quickly receive such Propositions from *Spain*, as would put it into his own Power to make the Reformation; otherwise the Islanders were persuaded that *England* could not live without their Wines. The Lords were resolved, notwithstanding all that had been said, that they would execute the former Proclamation, and reduce the Prices of Wines to what had been then determined; and after they had given a full Account of the whole Business unto the King in Council, the Resolution was approved, and a Proclamation issued out accordingly. The Merchants and the Vintners applied them-

selves to his Majesty, and to many of my Lords of the Council, and thought they had Encouragement enough from thence to hope for Relief, in an Appeal by Petition to the King and Council; and they had thereupon a Day given them to be heard, many of my Lords thought it very hard, if not unjust, to compel Men to sell cheaper than they bought, which was the Truth of the Case, and which must oblige both Merchants and Vintners to sophisticate and corrupt their Wines to preserve their Estates, which might probably turn to the great Damage of the whole Kingdom, in producing Sickness and Diseases; and this generous and charitable Consideration prevailed with the major Part of the Lords to be well contented, and to wish that some Indulgence might be exercised towards them. On the contrary, when the King had well weighed the whole Proceedings, and with Trouble and Indignation considered the obstinate Vice of the Nation, which would make us ridiculous to all the World, he expressed a positive Resolution to vindicate himself and his Government from this Reproach. He thought the adhering firmly to the Prices which had been resolved upon would be the best Preface to this Reformation, though it might bring particular Damage to particular Persons; who had yet less Cause to complain, because their own Advice had been followed; and thereupon declared, that he would make no Alteration: but withal told them, that if they could make any Proposition to him for the better Regulation of the Trade (for they had themselves mentioned a Charter) he would graciously receive any Propositions they would make, and gratify them in what was just; and so, notwithstanding all Attempts which were often repeated, the Price set by the Lords was ratified for the Year following.

Shortly after many of the Merchants, who had always traded to the *Canaries*, petitioned the King that they might be incorporated, and that none might be permitted to trade thither but such who would be of that Corporation, and observe the Constitutions which should be made by them: Which Petition was presented to the King at the Council-Board; and being read, his Majesty (according to his Custom in Matters of Difficulty and publick Concernment) directed it to be laid aside, and read again on that Day Month; in which Time his Majesty presumed that all who would oppose it, would present their Reasons and Objections against it, which he was very desirous to hear. At the Day appointed, though there were no Petitions against it, yet it was observed that there were many of the most eminent Merchants of that Trade whose Names were not to the Petition, nor appeared desirous to have a Charter granted; which his Majesty considering, put off the Debate for another Week; and directed, that the other Merchants by Name should be desired to be present, and to give their Advice freely upon the Point: And there was at that Day a very full Appearance; when his Majesty directed, that a Relation should be made to them of the whole Progress that had been made in the Business, and the Damage and Dishonour the Nation underwent in carrying on of that Trade; that many Merchants had presented a Petition to him, containing an Expedient to bring it into better Order, but finding them not to appear in it, and being informed that they were most engaged in that Trade, he had sent for

for them to know their Opinion, whether they thought what was proposed to be reasonable, and fit to be granted? and if so, why they did not concern themselves in it? They answered, That the Reason why they had not appeared in it was, because they should be Losers by it, and therefore were not solicitous to obtain a Grant from his Majesty to their own Damage; and so enlarged upon the Nature of the Trade, their long Experience in it, and the Greatness of their Stock, which they should not be allowed to continue under any Regulation: But as they did not think themselves obliged to be solicitous for a Change, so they could not deny, being required by his Majesty to speak the Truth, but that the Proposition that was made was for the publick Good and Benefit of the Kingdom, and that they could conceive no other Way to redeem that Trade, and the Nation, from the Insolence which the *Spaniard* exercised upon us; implying, that if his Majesty would command them, they would likewise concur, and join in carrying on the Service. To which his Majesty giving them gracious Encouragement, they all departed of one Mind, his Majesty remaining confirmed in the former Opinion he had of it. But there remained yet an Objection which was principally insisted upon by the Ministers of the Revenue, who alledged very reasonably, that this new modelling of the Trade must produce some Alteration, and would meet some Opposition from the *Spaniard*, which for the Time would lessen the Customs, and entitle the Farmers to a Defalcation. The Petition was therefore referred to the Farmers of the Customs, who were to attend the next Council-Day: And being then called in, they acknowledged, that the Design proposed would prove very profitable to the Kingdom in many Respects, upon which they enlarged; and that in the End it would not be attended with any Diminution of the Customs; but for the present, they said, they could not but expect that the Obstinacy and Contradiction of the *Spaniard* would give such a Stop to Trade, at least for one Year, that if his Majesty did not reimburse them for what should fall short in the Customs, they must look to be very great Losers; the Merchants, on the other Hand, offering to be bound, that if they did not the first Year bring in as much as had been usually entered, they would make good what should be wanting to the Farmers upon a Medium; and his Majesty himself declared, that he would not, for a small Damage to himself, hinder the Kingdom from enjoying so great a Benefit; and thereupon he commanded the Solicitor-General, who then attended the Board, to prepare such a Charter, as might provide for all those good Ends which were desired in the Petition, and which had been so largely debated. And I believe there was never a greater Concurrence of the Board in any Direction.

Many Months passed before the Charter was drawn; in which Time I never heard of the least new Objection made against it, or that any Man was unsatisfied with it. After it was engrossed, and passed the King's Hand, it was brought to the Great Seal; and then the Lord-Mayor of London and the Court of Aldermen had entered a *Caveat*, and I appointed a Day to hear Parties. The City alledged an Order made a Year or two before by the King in Council, upon a Com-

plaint then exhibited by the Court of Aldermen against the *Turky* Company, and other Corporations, in which they said there were very many Merchants of the best Trades and greatest Estates in the City, who would never take out their Freedom of the City, and so refused to bear any Charge or Office in it, to the very great Prejudice and Dishonour of the City; and of the Government thereof; they being by this Means compelled to call inferior Citizens to be Aldermen, before they had Estates to bear the Charge of it, whilst the gravest and the richest could not be compelled to take it, because they were not Freemen: Besides the Rules which the King gave upon the Difference then in Question, he was pleased to declare, and appointed it to be entered as an Order in the Council-Book, that Provision should be made, that in all Charters which he should hereafter renew or grant to any Companies or Corporations within the City of London, that they should first make themselves Freemen of the City, if they were not so before; and therefore that this Charter should not pass the Seals, before several Members, who were named in it, had made themselves Freemen of the City, by which they might be made liable to the Charges of it. The Merchants could not deny, that many of them were not yet Freemen, nor resolved to be: They said, they had never heard of this Order: And I declared to them, that I could not seal the Charter before they had given Satisfaction in it; and they seemed as positive, that they would rather be without their Charter, than submit to the other Inconvenience, and so they departed then; but shortly after they agreed to the Obligation, and a Clause to that Purpose was entered in the Charter in the King's Presence, and so returned to me to have the Seal fixed to it.

There were, by this Time, several other new Caveats entered against it; all which I heard, and settled every one of them to their joint Satisfaction. I heard then that there would be some Motions for the stopping it in the House of Commons; and some Parliament-Men who served for the Western Boroughs came to me, and desired me that I would not fix the Seal to it till they should be heard, since it would undo their Western Trade; and told me they resolved to move the House of Commons to put a Stop to it. I informed them of the whole Progress it had had, and told them I believed that they would hardly be able to offer any good Reasons against it: However, since it was known that the Parliament would be prorogued within ten or twelve Days, I would suspend the Sealing the Charter whilst the Houses sat, to the End that they might make any Objections against it if they thought fit: But the Parliament rose shortly after, without further taking Notice of it; nor did those Parliament-Men, or any others, further solicit me against the passing of it; and so I affixed the Great Seal to it according to my Duty. Thereupon the Company chose a Governor and other Officers, according to their Charter, and made such Orders and By-Laws as they thought fit, for the carrying on and Advancement of their Trade; which they might alter when they found it convenient; and for the present they resolved upon a Joint-Stock, assigning so many Shares to particular Men. In this Composition and Distribution, there happened some Difference between them-



themselves, which could not be taken Notice of Abroad; and even some of them, who first petitioned, and were most solicitous to procure the Charter, did what they could to hinder the Effect of it; sent privately to their Factors at the *Canaries*, to oppose any Orders which should be sent from the Governor and the Company; and that they should do all they could to incense the *Spaniards* against the Charter, promising that their Wine should be taken off in Spite of the Corporation: Whereupon, great Disorders did arise in the *Canaries* between the *English* themselves; and by the Conjunction of the *Spaniards* with those few *English* who opposed the Charter, they proceeded so far, as to send the principal Factors for the Company out of the Island to *Spain*, and to make a publick Act by the Governor and Council there, that no Ship belonging to the Company should be suffered to come into the Harbour, or to take in any Lading from the Island: All which were transacted there many Months before it was known in *England*, and probably would have been prevented, or easily reformed, if the breaking out of the Plague at *London*, and the War, had not restrained all *English* Shipping from going to the *Canaries* for the Space almost of a full Year; which Intermision likewise gave some Advantage here to the Merchants who opposed the Charter, by the not Return of their several Stocks within the Time promised by the Company.

When the King was at *Oxford*, and heard what had passed at the *Canaries*, some Merchants appeared there, to petition against the Charter, whereof there were some who were the first Petitioners for it: His Majesty appointed a Day for the solemn Hearing of it, in the Presence of his Privy-Council, the Governor being likewise summoned to be there. Upon opening all their Grievances, the Petitioners themselves confessed, that they could not complain of the Charter; that it was a just and necessary Charter, and for the great Benefit of the Kingdom, though some private Men might for the present be Losers by it; that their Complaint was only against their Constitutions and By-Laws, and their severe Prosecution of them contrary to the Intention of the Charter itself; instancing, among other Things, the very short Day limited by the Charter, after which they could not continue their Trade without being Members of the Corporation; and that Day was so soon after the Sealing of the Charter, that it was not possible for them to draw their Stock from thence in so short a Time. When they had finish'd all their Objections, the King observed to them, that they complain'd only of what themselves had done, and not at all of the Charter, which gave them only Authority to chuse a Governor, and make Constitutions and By-Laws; but directed not what those Constitutions and By-Laws should be, which were the Result of their own Consultations, in which the major Part must concur; and of that Kind their Joint-Stock was one, which, with the rest, they might alter again at their next Court, if the major Part were grieved with it: But because they had complained of some Particulars, in which they seem'd to have Reason on their Side, his Majesty express'd a Willingness to mediate and make an Agreement between them, and thereupon bid the Governor answer such and such Particulars, which seem'd to have most of Justice;

which he did very much at large, making it clearly appear that they had, in Truth, little Cause of Complaint; as to the short Day which was assign'd to them for drawing away their Stocks, which had the greatest Semblance of Reason, he said they had no Reason to complain of want of Warning, for that the Day was well enough known to them long before the Sealing of the Charter, and might very well have been complied with; but that they knew likewise, that afterwards the Time was enlarged to a Day desired by themselves, that there might be no Cause of Discontent; and thereupon read the Order of the Court to that purpose, which they could not deny in Conclusion; since it appeared that their Stock still remained there, which in Justice belonged to them, whether by their Fault or Misfortune it had not been drawn over. The King persuaded the Governor, and his Assistants, to give them such Satisfaction in that Particular and others, that before they retired from his Majesty's Presence, they were unanimously agreed upon all their Pretences; and though some of the Lords, upon some Insinuations and Discourses they had heard, had believed the Company to be in the wrong, they were now fully convinced of the contrary, and believed the Charter to be founded upon great Reason of State, and that the Execution of it had been very justifiable, and with great Moderation; and it is to be observed, that the Parliament being then assembled at *Oxford*, there was not the least Complaint against that Charter, or Corporation.

This was the whole Progress of that Affair, and all that I know of the Proceeding in it; in which I must confess, though I had no Hand in the Contrivance, I was fully satisfied in the Justice and Integrity of it, and even in the Necessity in Reason of State; and therefore, upon all the Addresses made to the King or Council in that whole Transaction, I did, it may be, appear more solicitous and warm for the Dispatch than other Men; and yet I never remember a fuller Concurrence in the whole Board than in this Advice; nor did my Inclination towards it, proceed from any other Motive than that of the Publick Good, without the least Temptation to or Imagination of any Profit or Advantage to myself, to which I have never been thought to be ever inclined; and the Delays I used in the passing this Charter, after it came to be sealed, and my giving Time for the weighing all Objections, and so much opposing the Company, with reference to their being made Freemen of the City, that they departed from me with a Resolution to prosecute the Charter no farther, are no Signs that I had such a Mind to please them as a Man would have who was corrupted by them, or who was to have a Share in the Profit of the Patent. For the granting any Injunctions in *Chancery* to stop Proceedings at the Law, against that or any other Charter, I cannot comprehend the Meaning of that Charge; and do presume that I have never granted any Injunctions in that Court, but what was agreeable to the Course and Justice of it, and I am sure was always done in publick, and upon Debate in the Court.

The Fourth Article is, *That I have advised and procured divers of his Majesty's Subjects to be imprisoned against Law, in remote Islands, Garrisons, and other Places, thereby to prevent them from*

*from the Benefit of the Law; and to introduce Precedents for imprisoning of other of his Majesty's Subjects in like manner.*

I know not what to answer to this Article, it being so general, and no particular Person being named; but it is generally known, that I have never taken upon me to commit any Man to Prison, but such who by the Course of the *Chancery* for Matters of Contempt are justly committed. It is probable that I have been present at the Council-Board, when many Persons have been ordered to be committed, and whose Commitment hath, by the Wisdom of that Board, been thought just and necessary; and therefore I am not to answer apart for any thing done by them; only I may say, that I was frequently of Opinion that the Commitments were very just, and very necessary; and it is notoriously known, that by such Commitments a Rebellion hath been sometimes prevented, and that other Persons, who have been afterwards attainted and executed for High Treason, have, upon their Examination, and at their Death, confess'd that their Purpose had been to rise in Arms at such and such Times, if their Friends, upon whom they had principally relied, had not been then committed to Prison; and I well remember, that it was thought fit that most of the Persons who stand attainted for the Murther of the late King, his Majesty's Royal Father, should be removed out of the Tower, and dispersed into several Islands and Garrisons; and if any other Persons have been likewise sent thither, I presume it was upon such Reason, as, upon a due Examination thereof, will make it be thought very just.

The Fifth Article is, *That I have corruptly sold several Offices contrary to Law.*

This Charge I utterly deny.

The Sixth Article is, *That I have procured his Majesty's Customs to be Farmed at under Rates, knowing the same; and great pretended Debts to be paid by his Majesty, to the Payment whereof his Majesty was not in Strictness bound; and have received great Sums of Money for procuring the same.*

I have never had any thing to do in disposing of his Majesty's Customs, or any other Part of his Revenue; only for some short Time after his Majesty's first Arrival in England, I, amongst others of my Lords of the Council, was a Commissioner of the Treasury; during which Time, if I am not very much mistaken, there was no Farm lett of any of the Revenue, and the Customs were put into the Hands of Commissioners, to the end that a Computation might be made as near as was possible of the true Value of them, before that it should be put into a Farm, which every Man conceived would be fit to be done as soon as might be. The White Staff was shortly after given to the Earl of Southampton, and the Chancellorship of the *Exchequer* to the Lord Ashley, I having then resign'd it, and having been before possess'd of it at the Time when the King returned into England; and from the Time that these two Officers of the Revenue were made, which determined the former Commission, I never intermeddled in the Customs, or any other Branch of the Revenue; except when the King commanded me to be present in some Consultations which he had with my Lord Treasurer, when there were other of my Lords likewise present;

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that excellent Person always resorting to the King, for his Direction in all Matters of the least Difficulty which occurred to him in the Administration of his Office; and except the Lord Treasurer himself (with whom I had the Honour to have held a long and a fast Friendship) did desire to confer with me, as he very often did upon many Particulars of his Office, believing that I was not altogether ignorant in that Administration, with which I had been formerly so well acquainted; and that I presume might be the Reason why he did oftentimes procure me to be join'd with him in References from the King, upon Matters wholly relating to his own Office. But I never suffered particular Applications to be made to me in those Cases, nor had ever any secret Conference with any Persons who were concerned in such Pretensions. What is meant by my having procured his Majesty's Customs to be Farmed at under Rates, knowing the same, and great pretended Debts to be paid by his Majesty, to the Payment whereof his Majesty was not in Strictness bound, I cannot imagine, except it relates to the Payment of a Debt due from his late Majesty to some of the Farmers; in which, tho' I had no more to do than in giving Information, and my particular Advice to his Majesty, in the Presence of my Lord Treasurer, the Chancellor of the *Exchequer*, and other of my Lords, and so am not myself responsible for what his Majesty did thereupon, and he did nothing but with the Approbation and Consent of all the rest; yet I think myself obliged upon this Particular, which so much concerns the Honour and Justice of the late King, and of his present Majesty, to enlarge and relate all I know of what their Majesties did; and what induced his present Majesty to do his Part of it. It is notoriously known, that before the late Troubles, and in the very first Entrance into them, his Majesty was necessitated to borrow very great Sums of Money from his then Farmers of his Customs, and to oblige them to stand personally bound for many other great Sums of Money which other Men lent to his Majesty upon their Security. That thereupon, and for the Repayment of those Sums of Money which the Farmers had advanced, and for securing them from any Damage for those Monies which others had lent upon their Obligations, his Majesty, with the Advice of the then Lord Treasurer and Chancellor of the *Exchequer*, had granted a farther Lease of his Customs to those Farmers for Three or Four Years to come, after the Expiration of their former Lease; with a Covenant on his Majesty's Part, to pay the just Interest of Eight *per Cent.* for all such Monies as were advanced by them, or for which they stood bound; and likewise that they should, out of their growing Rent, deduct all such Sums of Money by the Year, as they had lent, or were bound for. It is as well known, that after the Beginning of the Parliament in 1640, and before the Commencement of the second Lease, the *House of Commons* not only forced the said Farmers to pay a very great Sum of Money for their Presumption in receiving Customs and Impositions upon Merchandize in the former Years, when, as they pretended, such Payments were not due; but took also from them their new Lease granted to them by the King, and so left them without any Capacities of reimbursing themselves of the Money they had lent, and likewise in the Mercy of their Creditors to whom they stood bound;



many of whom quickly began to exercise that Severity towards them, that many of the poor Gentlemen had their Estates quickly extended upon Judgments and Recognizances, and their Persons taken in Execution, and committed to Prison; where some of them who had been known to have great Estates, as *Sir Paul Pinder*, and others, were forced to end their Days. There were very few Circumstances in the late King's Misfortune, which gave him so much Trouble, or so much afflicted him, as the Sense he had of the hard and unjust Sufferings those poor Gentlemen underwent for him and their Affection to his Service; which he often mentioned, and as often declared, that he held himself obliged to make them full Reparation, as soon as God should enable him. And after he had vouchsafed to make me his Chancellor of the *Exchequer*, he frequently spoke to me of it; of the very good Opinion he had of the Men, of the great Services they had done for him; and commanded me expressly, that whenever it should fall within my Power, I would do them all the Right I could. And of this I did often inform his Majesty during the Time he was Abroad, and after his Return, without any other Motive than his Father's Command, and his own Honour, having myself never had any Degree of Friendship with any of the Persons concerned, and a very ordinary Acquaintance with some of them. Upon his Majesty's happy Return, those Gentlemen who were alive of the old Farmers (which, as I remember, were *Sir John Jacob*, *Sir Job Harby*, *Sir Nicholas Crispe*, and *Sir John Harrison*) applied themselves to the King, having lain several Years, and then remaining in Execution in some Prison, and having had their Estates sold, upon the Prosecution of those Creditors to whom they were bound for Monies lent to his Majesty. As soon as Care was taken for collecting the Revenue, those Four Gentlemen named before, and Two others who had served his Majesty very well, were appointed his Commissioners for the collecting the Customs and Duties upon Trade; in which Collection they continued for above a Year, or thereabouts; during which Time many of their Creditors, who had generously forbore to prosecute them whilst they were in Prison and undone, began now to commence their Actions against them, presuming they were then, or would shortly be able to satisfy them: Whereupon, his Majesty commanded my Lord Treasurer, and me, with some other Lords, as I remember, to send for those Creditors, and to declare to them, that his Majesty would, in a short Time, enable his Farmers to pay them their just Debts, which he well knew were contracted for his Service; and that he would take it very well from them, if they would for the present give no Obstruction to his Service, by the Prosecution of those Persons at Law, whose Time was solely taken up in the necessary Service of his Majesty: Whereupon they willingly desisted from that Prosecution; and many of them finding now, that by his Majesty's Favour they were like to receive their Debts, which before they thought desperate, they frankly remitted the Whole, or Part of the Interest, that in Strictness of Law was still due to them. His Majesty, shortly after, judging it best for his Profit to determine the Collection by Commission, and to Lett the Whole to Farm, gave Direction to the Lord Treasurer to confer and

treat with any fit Persons who desired the same: Many Overtures were made by several Persons, and some applied themselves directly to his Majesty; upon which, and after a competent Time in considering all that was proposed, the King appointed a Day when he would be attended by my Lord Treasurer, and other of my Lords, and when all the Pretenders should likewise be present, and he would then and there declare his own Judgment; having first declared to the Commissioners, whereof Four were old Farmers to whom so much Money was due, that whosoever should take the Farm, they should be obliged to pay them their just Debt at such Times, and by such Proportions as his Service could bear; but as to the Letting the Farm itself, he should neither consider the Debt he owed them, nor the Sufferings they had undergone, but only the Rent they should offer; which, if as much as any Body else would give, he would prefer their Persons before others; but if any other fit Men would offer more than they thought fit to give, they should be his Farmers; and therefore wished them well to consider what they would propose to him. After two Days spent by his Majesty in Conference with several Pretenders apart, and finding that the Propositions made to him by the old Farmers, with whom the other Two were to be joined who had served with them as Commissioners, were at least as much, if not more for his Profit than any which had been made by the rest, he declared that the Farm should be Lett to those who had been his Commissioners: Which was at that Time understood to be so far from a good Bargain, that the Two Commissioners who were not concerned in the great Debt, utterly refused to meddle with the Farm at so great a Rent; the other Four publicly declaring at the same time, that they would not give the Rent but in Contemplation of their Debt, which they thought they should sooner and better receive, when it should be assign'd upon their own Collections, than when it should be charged upon new Farmers; but were Suitors to his Majesty, that he would oblige the other Two (*Sir John Wolstenholme* and *Sir John Shaw*) to be joint Farmers with them; which his Majesty did, by making them a gracious Promise, that if they should be Losers he would repair them: And thereupon Directions were given to Mr. Attorney-General to prepare a Grant accordingly; and I do not know there was one dissenting Voice from what his Majesty inclined to do upon the whole Debate of that Matter, the same appearing to every Man to be most just and reasonable.

The Farm being thus settled, the old Farmers were directed to bring their Account to my Lord Treasurer; by which it should manifestly appear how much the late King was justly and truly indebted to them, and how those Debts were incurred; that so, upon a just Computation, such a Satisfaction might be made to them, as was consistent with the present State of his Majesty's Occasions. Many Months, if not a whole Year, were spent in the Examination of those Accounts before the Auditors; who, besides the Exceptions they took for want of some Formalities, in the Proof of some Monies paid, which after Twenty Years of License, in which all their Books and Papers had been taken, their Houses plundered, their Persons imprisoned, and in which so many Persons employed by the King

to receive and by them to pay Money were dead, could hardly be made with the usual Exactness, made likewise several Certificates of particular Cases, which required further Direction; and the Lord Treasurer would never take upon himself to give those Directions, only declaring to them, which he had frequently done, that, in regard his Majesty was not strictly bound in Justice to pay that Debt due from his Father, but that his present Majesty's generous and royal Disposition had prevail'd with him to pay that just Debt, whereby they might be preserved from Ruin, in which he said he fully concurred with his Majesty; but that he would never advise him, on the contrary, he would always dissuade his Majesty from paying or allowing any Interest, though paid by them, which would swell the Debt to such a Proportion, that his Majesty could never undertake the Payment of it: Which Determination, how great soever their Loss appear'd to be, seem'd to be so just, at least so necessary for the King, that they wholly referr'd it to his Majesty; hoping that it might prevail with many of their Creditors not to exact it from them, though the Sale of their whole Estates had made Satisfaction to others for the whole Interest as well as for the Principal. When the Auditors Certificate was ready, and all the Doubts and Questions, which did arise thereupon, were clearly stated, his Majesty vouchsafed again to be present, with the other Lords, who had from the Beginning assisted in the Examination of that Business; and then the Lord Treasurer declared to his Majesty, what he had before said to the Persons concerned, that though he willingly approved his Majesty's Goodness in taking upon himself that great Debt, yet that he would by no Means give his Advice or Consent that he should pay or allow any Interest for it. Upon the whole Matter, and upon all the Doubts stated to his Majesty, and after the Rejection of several considerable Sums of Money demanded by them, and for the Payment whereof such direct Proof was not made, as is required by the Course of the *Exchequer*; though I think most Persons who were present, were, in their private Consciences, well satisfied that those Sums had been, in Truth, paid, as was alledged; there appear'd to his Majesty to be justly due to them the Sum of Two Hundred Thousand Pounds Principal Money for almost Twenty Years, and for which they had paid so much Interest; and his Majesty thought it very just, and, with many gracious Expressions to them of his Purpose and Resolution further to repair them as he should be able, gave Order to the Lord Treasurer that the said Debt of Two Hundred Thousand Pounds should be paid to them in Five Years; that is, by Forty Thousand Pounds for every Year out of the Rent of the Farm; and that all Instruments necessary for their Satisfaction and Security should be presently given to them, whereby they might be able to comply with their Creditors, and avoid their Importunity. I do confess myself to have been present at these Agitations, and to have contributed my humble Advice and Opinion to his Majesty that he should pay this Debt; which I thought myself obliged to do, as well as a faithful Counsellor to his present Majesty, as in Discharge of my Duty and Obligation to his Father; and I have very good Reason to believe, that if

that Two Hundred Thousand Pounds be paid according to his Majesty's Direction, of which I know nothing, and of which the Heirs and Executors of those Farmers who are dead, as well as the four present Farmers, have their equal Proportions, that the said Persons have not at this Day half the Estates which they had in the Year 1640, when they enter'd into those Engagements for his Majesty: Nor was there any one Person present at the Agitation of this Affair, who seem'd in the least Degree to differ in Opinion, or to dissuade his Majesty to give that Satisfaction for that Debt which he vouchsafed to do.

I do likewise very willingly confess, that I have in the manner aforesaid, and being called to advise, given my Opinion for the Payment of many other considerable Debts incurred by his late Majesty; and for which many Persons of Honour, who adhered to him during the War, were personally bound for him, and whose Estates had been extended, and their Persons imprisoned for the same; many of whom were then in Execution, and in Prison when his Majesty return'd, and others then sued in *Westminster-Hall*, in his Majesty's own Court. His late Majesty having granted under his Great Seal of *England*, to several Persons intrusted for the rest, many of his Forests, Parks, and other Lands, for their Security and Indemnity, who were or should stand bound for him, for Monies which were then borrowed for, and applied to the necessary Support of himself and his Army, and to no other Purpose; and in that Grant I was particularly entrusted, as well by the Desire of the Persons concern'd, as by his Majesty's Command, to be solicitous for their Satisfaction: And I cannot deny that I have never been more delighted, than when I have been able to procure any Satisfaction for those Persons who were so bound and so secured; nor ever more troubled, than that I could do no more, and that there remain so many still unsatisfied, and almost undone for those Debts so contracted, of which Number I believe there are still too many. But having made these clear Confessions of what is Truth, and what I did do in these Transactions, I must as positively deny, that ever I procured or advised the Letting his Majesty's Customs, or any other Part of his Revenue; on the contrary, that I used all the Ways I could to advance the Rents without respect of Persons; and I presume I was never present at the Letting of any Farm that any Man would have given more for, than they did to whom it was Lett, what Offers soever were made afterwards, when his Majesty had contracted himself, and a Grant was issued accordingly, under the Great Seal of *England*: And I do as positively deny, that ever I received or expected the least Sum of Money, or Moneyworth, for any Lease made by his Majesty of his Customs, or any other Part of his Revenue; or for the Payment of any one Debt made by his Majesty, to which he was or was not bound; I having never had any other Motive for the Performance of those Offices, but the pure and entire Consideration of his Majesty's Honour, Justice and Profit, and my own Inclination to gratify worthy Persons, who in Justice ought to be, or might with Justice be gratified and obliged, and who have commonly been such Persons to whom I have had no kind of Obligation.

The



The Seventh Article is, *That I have received great Sums of Money from the Company of Vintners, or some of them, or their Agents, for inhancing the Prices of Wines, and for freeing them from the Payment of legal Penalties which they had incurred.*

If I had been in the least Degree guilty of this Charge, it would very easily have been proved, and the *Vintners* would very gladly have helped them in it, being Persons who never thought themselves beholden to me, and so not obliged to conceal any of my Corruptions. They well knew that I could never be prevail'd with to consent to the inhancing the Prices of their Wine, and that I never had the least Sum of Money from them in my Life. I remember, at a Time when his Majesty had refused to grant all their other Petitions, the Company of *Vintners* did complain that there were so many Informations against them prosecuted by Informers in the *Exchequer*; that they must give over their Trades, and be likewise undone, if they were severely prosecuted for what was past; and therefore besought his Majesty in Council, that he would pardon what was past, and that for the future they would trespass no more. Whereupon his Majesty thought it worthy of his Mercy to shelter them for the present from that Prosecution; and thereupon commanded his Attorney-General to call the Informers before him, and to appoint the *Vintners* to pay them such reasonable Rewards for their Pains as he thought fit, and thereupon he should enter a *Noli Prosequi*; but his Majesty charged them for the future, not to run into the same Danger: And as this Grace from his Majesty was not upon my Promotion, but purely from his own Bounty and Goodness, from which no Person there dissuaded him, as I remember, so I never received the least Profit from the same.

The Eighth Article is, *That I have in a short Time gained to myself a far greater Estate than can be imagined to be lawfully gained in so short a Time; and, contrary to my Oath, have procured several Grants under the Great Seal from his Majesty, to myself and Relations, of several of his Majesty's Lands, Hereditaments, and Leases, to the Disprofit of his Majesty.*

I wish with all my Heart that the Truth of this Article (which I presume hath drawn on all the rest) were clearly known to all the World; that they who in Truth believe that I have so great an Estate, were very well informed what it is, and they would then clearly discern that I need not be ashamed of having gotten such an Estate, nor needed to have any Recourse to any ill Arts or Means for the obtaining thereof; they would know that I have been so far from procuring several Grants under the Great Seal of *England* from his Majesty, to myself and Relations, of several of his Majesty's Lands, Hereditaments, and Leases, to the Disprofit of his Majesty, that I never moved his Majesty in my Life, for any one Grant to myself, or any of my Relations. If his Majesty's Royal Bounty did dispose him to confer somewhat of Benefit and Advantage upon an old Servant, who had waited upon his Father and himself near Thirty Years in some Trust and Employment; I hope it shall not be imputed as a Crime in me to receive his Favours. I am far from believing or imagining that the poor Services I ever did, or can do, were in any Degree proportionable to his Majesty's Bounty;

yet since his Goodness thought me fit for it, I hope many others will think so too; at least as fit as some Men, who have received greater Marks and Proportions of it than I have done, and who, though they might serve much better, had not served so long. I forbear to enlarge upon this particular Charge, because I conceive that it is now evident to many who were wrought upon by those who did not believe it themselves, to think my Estate to be very great, that the Information they received was without ground: And whoever considers, that the first Year after the King's coming in, yielded justly more Profit to the Great Seal than I ever received in all the Years following, and some particular Acts of Bounty in his Majesty conferred on me, without the least Suit of my own, and unthought of by me, will believe that my Fault is greater in having no better an Estate, than that what I have hath been gotten by Corruption. I have none of his Majesty's Lands but what I bought, for as much as any body would pay for it, of those who had the same granted to them out of his Majesty's Bounty, and that Grant confirmed by Act of Parliament; and, I presume, it cannot have fallen from his Majesty's Memory, and I am sure is well known to some Persons of Honour yet alive, that when his Majesty was graciously pleased, at his first coming over, to offer me some Land which had never yielded the Crown any thing, I absolutely refused to receive it, because it was generally thought to be of great Value, as I believe it is; and therefore I would not expose myself to the Envy which naturally attends such Donations, having in truth never had an immoderate Appetite to make haste to be rich; and as much apprehended the being accused of Witchcraft or Burglary, as of Bribery and Corruption. In a Word, I do declare, that my Debts being discharged, for which I pay Interest, all my Estate is not worth, being sold, the Money I have received from his Majesty's own Royal Bounty, and far from being suitable to the Quality I yet hold, and which was never obtain'd by my own Ambition, as many Persons of Honour yet alive can testify.

The Ninth Article is, *That I introduced an arbitrary Government in his Majesty's foreign Plantations, and have caused such as complained thereof before his Majesty and Council, to be long imprisoned for so doing.*

Though I cannot possibly comprehend the full Meaning of this Article, yet because I have heard of many Discourses made of the Authority I assumed over the Plantations, and the great Advantage and Profit I have drawn to myself from thence, I am very willing to take this Occasion to relate all that I know, and all that I have done with reference to any of his Majesty's Plantations; declaring, in the first Place, that at his Majesty's Return, and before, I did use all the Endeavours I could to prepare and dispose the King to a great Esteem of his Plantations, and to encourage the Improvement of them by all the Ways which could reasonably be proposed to him; and I was confirmed in this Opinion and Desire, as soon as I had a View of the Entries in the *Custom-House*, by which I found what a great Revenue accrued to the King from those Plantations, inasmuch as the Receipts from thence had upon the Matter repaired the Decrease and Diminution of the Customs, which the late Troubles had brought upon

on other Parts of Trade, from what it had formerly yielded. The first Consideration that offer'd itself before the King, that related to the Plantations, was concerning the *Barbadoes*, which having been most discourf'd of since, and, as I hear, with some Reflections upon me of Partiality and Injustice, I shall, in the first Place, set down all I know in that Affair, and how I came to speak in it.

Before the Beginning of the late Troubles, the King had granted the Island of the *Barbadoes* to the Earl of *Carlisle* and his Heirs for ever, upon a Supposition that it had been first discovered, possessed, and planted at his Charge; and the said Earl sent a Governor and People thither, and enjoyed it to his Death, and by his Will settled it for the Payment of his Debts, which were very great: The Troubles falling out in a short Time after, little or no Profit had been drawn from thence towards the Satisfaction of those Debts, and the Executors and Trustees totally neglected the taking Care of it, or prosecuting the Plantation; but in and after the War, many Citizens, Merchants, and Gentlemen, who were willing or forced to withdraw themselves from *England*, transported themselves thither, and there planted, without asking any body's Leave, or without being oppos'd or contradicted by any body. About the Year 1647, or thereabouts, the late Earl of *Carlisle*, Son and Heir of the former Earl, to whom the Inheritance of that Island belonged, treated with the late Lord *Willoughby* of *Parbam*, how that Island might be so ordered, that the Plantation might be advanced, and Profit made by it, which would at last redound to himself when the Debt should be paid. The late King was then in the Hands of the Army; and with his Approbation and Consent, it was agreed between the said Earl and the said Lord, that a Lease should be made by the Earl of *Carlisle* to the Lord *Willoughby*, of all the Profits which should arise out of that Plantation for the Term of twenty one Years, as I remember; a Moiety of the whole Profits to be received by the Lord *Willoughby* himself, for his own Use, and Recompence of his Charge and Pains; and he was likewise to receive a Commission from the said Earl, to be Governor of that and the rest of the *Caribbee* Islands (all which were comprehended in the Charter granted by the King to the Earl of *Carlisle*) and that a Commission should likewise be procured from the King, or the Prince of *Wales*, by which the said Lord *Willoughby* was to be constituted Governor of the said Islands. About that Time the Fleet then in the *Downs* returned to their Obedience to the King, withdrawing themselves to the Coast of *Holland*, to offer their Service to the Prince of *Wales*, his Majesty that now is; the Lord *Willoughby* coming likewise over then to him, to serve him in any Condition he pleas'd to employ him. I need not speak of the Disappointments of that Summer, and the ill Success of that Fleet; but all those Hopes being vanished, and there being no present Employment for the Lord *Willoughby*, he then inform'd the Prince of what had pass'd between the Earl of *Carlisle* and him, with his Father's Consent; which his Highness had likewise received from the King himself, with much Recommendation of the Lord *Willoughby*. I was then attending upon the Prince in *Holland*, as one of the King's Council assign'd by him for

that Service. Upon the understanding of this whole Case, the Prince, upon the unanimous Advice of the Council, thought fit to grant such a Commission of Governor of the *Barbadoes* and other Islands, as he desired; and he had the more Reason to desire it (notwithstanding the Earl of *Carlisle*'s Grant and Commission) because the principal Planters upon the *Barbadoes* had been Officers in the King's Army, or of manifest Affection to him, or always look'd upon as of his Party. With this Commission the Lord *Willoughby* had, at his great Charge and Expence, transported himself to the *Barbadoes*, and was there received as Governor; and made a Contract with the Planters, that so much should be paid upon the Hundred to the Earl of *Carlisle*, to whom the Propriety of the Whole belonged. But before this Agreement could be well executed, or any Profit drawn from thence, the Island was reduced to the Service of the Parliament, and of *Cromwell*, and a Governor appointed by them; the Lord *Willoughby* being sent into *England*, where he remained till the King's Return, and had given unquestionable Evidence of his Affection to the King's Service, for which he had often been committed to Prison before and after *Cromwell*'s Death.

As soon as the King returned, the Lord *Willoughby* (who had then eight or nine Years to come of his Lease formerly granted to him by the Earl of *Carlisle*, who was then likewise living, and ready to do any other Act to the Lord *Willoughby*'s Advantage) resolv'd to return himself to the *Barbadoes*, and desired the King to renew his Commission to him for the Government; which his Majesty was very willing to do, as to a Person he esteem'd very much, and who had spent very much of his own Fortune, as is notoriously known, in that Service: But the *Barbadoes* and all those other Islands were now become of another Consideration and Value than they had been of before the Troubles; the *Barbadoes* itself was (by that Confluence and Resort thither as was mentioned before) so fully planted that there was no Room for new Comers, and they had sent very many of their People to the other Islands to plant; many Citizens of *London* had rais'd very great Estates there, and every Year had a great Revenue thence; and the King's Customs from that one Island came to a very great Sum of Money yearly. All these Men, who had enter'd upon that Plantation as a waste Place, and with very great Charge brought it to that Perfection, and with great Trouble, began now to apprehend that they must depend upon the good Will of the Earl of *Carlisle* and Lord *Willoughby* for the Enjoyment of their Estates there, which they look'd upon as their own; all these Men join'd together in an Appeal to the King, and humbly pray'd his Protection: and that they might not be oppress'd by those two Lords, they said, they were the King's Subjects; that they had repaired thither as to a desolate Place, and had by their Industry obtained a Livelihood there, when they could not with a good Conscience stay in *England*; that if they were now left to those Lords to ransom themselves, and compound their Estates, they must leave the Country, and the Plantation would be destroyed, which yielded his Majesty so great a Revenue; that they could defend themselves by Law against the Earl of *Carlisle*'s Title, if his Majesty did not



countenance it by a new Grant of the Government to the Lord *Willoughby*; and therefore were Suitors to his Majesty not to destroy them by that Countenance. At the same Time, the Creditors of the late Earl of *Carlisle* (whose Debts were to be satisfied by the Profits of that Plantation, by the Will and Settlement of the said Earl) petitioned the King that they might be first provided for; their principal Money due to them at the Death of the Earl amounted to no less than Fifty thousand Pounds, of which they had never yet received one Penny; and therefore that the Profits which should arise ought in the first place to be applied to them, there having been many Families utterly ruined for want of their Money so due to them. The King appointed to hear all the several Pretences at the Council-Board, where they all attended with their Counsel; and after his Majesty had spent three or four Days himself in hearing the several Allegations, and finding new Pretences and Difficulties every Day to arise (which shall be mentioned anon) his Majesty appointed several of my Lords of the Council to consider of the whole Matter, and to confer with the several Parties, and if it were possible to make an End between them by their own Consent; otherwise to report the several Titles to his Majesty, with such Expedients as in their Judgments they thought most likely to produce a general Satisfaction, without endangering the Plantation, the Preservation whereof his Majesty took to Heart. I had the Honour to be one of that Committee; and took very much Pains in reading the Charters, Grants, and Leafes, and many other Papers and Dispatches which concerned that Affair, and conferred with several of the Persons interested, to the end that I might the better discern what could be done, having never understood or heard any thing of the Matter, or that concerned that Plantation, otherwise than what I have before set down upon the Dispatch of the Lord *Willoughby* in *Holland*; nor had I the least Inclination or Byass to any Party. Upon the hearing all the Allegations before my Lords, the several Pretences and Titles appeared to us to be these; which we afterwards reported to the King.

The Lord *Willoughby* demanded nothing from the King but his Commission to be Governor for the remainder of the Years which had been granted to him by the Earl of *Carlisle*, to the end that he might receive one Moiety of those Profits which should arise to the Earl, and which had been assigned to him with the Consent and Approbation of the late King, and his Majesty that now is, upon which he had undertaken that Voyage, and spent so much of his Estate.

The Earl of *Carlisle*, while this Contention was depending, died, and by his Will devised his Interest in the *Barbadoes* to the E. of *Kinnoul*, who likewise petitioned the King for the preserving his Right; but neither he, nor the Person under whom he claimed, had any Pretence till all the Debts were satisfied, nor did the Earl of *Kinnoul* demand any thing till then; but believed the Profit would arise yearly to so much, that the Debts would quickly be satisfied, and then the Whole would come to him.

There was another Title that preceded the Earl of *Carlisle's*, which was that of the Earl of *Marlborough*, who alledged and proved it to be true, that the *Barbadoes* and those adjacent

Islands were first granted by the King to his Grandfather the Earl of *Marlborough*, then Lord High-Treasurer of *England*, before the Earl of *Carlisle* had any Pretence thereunto; and that the Lord Treasurer had afterwards consented that the same should be granted to the Earl of *Carlisle*, upon a full Contract, that he should first receive for ever the Sum of Three hundred Pounds by the Year out of the first Profits of the Plantations; which Sum of Three hundred Pounds had never yet been paid; and therefore the Earl of *Marlborough* desired, as Heir to his Grandfather, to have Satisfaction for the Arrears, and that the growing Rent might be secured to him.

The Creditors were of two kinds: The first, and who had first petitioned the King, as was said before, had an Assignment made to them by the Executors and Trustees of the Earl of *Carlisle* upon his Will, and who, at his Death, owed them the full Sum of Fifty thousand Pounds, or thereabouts: The other Creditors consisted of several Tradesmen and Artificers, to whom the said Earl was indebted for Wares and Goods which had been delivered for his Use, and of several Servants for their Arrears of Wages; and all these had, during the late Troubles, exhibited their Bill in *Chancery* against the Executors and Overseers of the late Earl, and had obtained a Decree in that Court for their Satisfaction, out of the Profits of those Plantations; which Decree stood confirmed by the Acts of judicial Proceedings; and as I remember their Debts amounted to Thirty thousand Pounds, or thereabouts: None of the Creditors in general, of one or the other sort, had ever received one Shilling from the Time that the Earl had first assigned it.

The Planters insisted positively, that the Charter granted to the Earl of *Carlisle* from the King was void in Point of Law; for which their Counsel alledged many Reasons: And having spent much Time upon that Argumentation, they concluded with two humble Propositions to the King; first, That his Majesty would give them Leave to prosecute in his Name in the *Exchequer*, and at their own Charge, to repeal that Grant to the Earl of *Carlisle*; by which they should be freed from the arbitrary Power and Oppression which would be exercised upon them under the Colour of that Charter, and his Majesty might receive a great Benefit to himself, by taking the Sovereignty to himself, to whom it justly belonged: And in that case they offered in their own Names, and for the rest of the Planters who were in the Island, to consent to an Imposition of so much upon the Hundred, which they confidently avowed would amount to at least Ten thousand Pounds a Year; out of which his Majesty's Governor might be well supported, and his Majesty dispose of the Overplus as he thought fit. Secondly, If his Majesty would not suffer the Charter to be repealed, that he would leave those who claimed under the Earl of *Carlisle's* Patent to their Remedy at Law, and leave the Planters to their own Defence; which they hoped in Justice could not be denied to them, since they alone had been at the Charge to settle the Plantation, which brought so great a Revenue every Year to his Majesty, when the Earl had not been at the least Expence thereupon; and if his Majesty should not assist their Pretences with his Royal Authority, they must all quit the Plantation,

tion, which would be to his Majesty's great Damage.

These being the several Pretences of the several Persons, and nothing being to be done by any Agreement between themselves, their Interests being so distinct and inconsistent with each others, his Majesty thought fit, in the first place, to refer the Consideration of the Legality and Validity of the Patent to his Counsel at Law; who, upon full Deliberation after the hearing of all Parties, returned their Opinion, That their Patent was void, and that his Majesty might take the same into his own Power. This Report was no sooner made to his Majesty, but that he very graciously declared, he would not from hence receive any Benefit and Advantage to himself, until all their Pretences had received Satisfaction; and that he would make no other Use of avoiding the said Charter, than to dispose the Profits of the Plantation to those who in Justice had any Pretence in Law or Equity to receive the same; and therefore, that the Lord *Willoughby* should proceed in his Voyage to the *Barbadoes*, and should receive according to his Bargain a Moiety of the Profits, and that the other should be disposed of for the Satisfaction of the Debts and other Incumbrances; in order to which, his Majesty appointed the same Committee of the Lords to meet again, and to adjust the several Proportions.

When they met, they had all the Persons concerned present with them, or ready to be called in upon any Occasion; and they all appeared very glad that the King had taken the Care and Protection of the Plantation upon himself, which was all the Security the Planters had or could desire; and the Lords first Care was to make some Computation of what might be depended upon as the yearly Revenue that would arise upon the Imposition within the Island: But the Planters could not be drawn to any particular Agreement in that Point, not so much as to consent to what should be imposed upon every Hundred; but, on the contrary, declared, that too much had been undertaken in that kind by one of their own Number (Mr. *Kendale*) in his Discourse before the King in the Council, and declared that the Plantation could not bear the Imposition he had mentioned; that whatsoever was to be done of this Nature was to be transacted by an Assembly in the Island; and that all that they could promise for themselves was, that they would use their utmost Endeavours with their Friends in the Island, that when the Lord *Willoughby* should arrive there, and call an Assembly, they should consent to as great an Imposition as the Plantation would bear; by which a good Revenue would arise to the King for the Purposes aforesaid.

The Creditors had great Reason to be glad of the Resolution his Majesty had taken; for tho' it would be a long time before they could be fully satisfied out of a Moiety of the Profits, tho' it should arise to the highest Computation; yet in time they should receive all, and should every Year receive some: Which would lessen their Debt, and relieve those who were in the highest Necessities, of which there was a great Number; whereas they had hitherto, in so many Years, received not one Penny; and it was evident, that without his Majesty's Authority they never should, since the Planters were resolved never to consent to any Imposition, or submit to any Au-

thority that should be exercised under the Earl of *Carlisle's* Patent, without a due Course of Law, the Way to obtain which would be very difficult to find out; and they understood well enough, that without his Majesty's Grace and Bounty to them, the repeal or avoiding the Earl of *Carlisle's* Patent would put a quick End to all their Pretences.

The greatest Difficulty that did arise was from the Earl of *Kinnoul*, to whom the last Earl of *Carlisle* had devised these Islands by his Will; and he had a great Mind to go thither himself, and take Possession of his Right; and his Counsel had persuaded him, that the King's Charter granted to the first Earl of *Carlisle* was good and valid in Law, and that they believed they could maintain and defend it in any Court of Justice. Then his own Estate in *Scotland* was so totally lost by the Iniquity of the Times, and by his Father's having so frankly declared himself for the King, when very few of that Nation lost any thing by their Loyalty, that he had very little left to support himself; and therefore was willing to retire into any Place abroad, where he might find but a bare Subsistence: But when he considered again, that he could have no Pretence to any thing in the *Barbadoes*, till after all the Creditors were fully satisfied, and how long it was like to be before they could be satisfied, there remaining still due to the Creditors of both kinds no less than Fourscore thousand Pounds Sterling principal Money, he did not believe that his insisting upon the Patent would be worth the Charge and Hazard he must inevitably be put to; and therefore, upon further Deliberation with his Friends, he willingly referred himself and all his Interest to the King's gracious Determination, as all the rest of the Pretenders and interested Persons had done.

The Case being thus fully stated to the Lords, and every Man's Interest or Pretence clearly appearing to them, they considered seriously amongst themselves what they might reasonably propose to the several Persons, in order to their Agreement amongst themselves; and that proving ineffectual, what Advice they might reasonably give his Majesty. They were unanimously of Opinion, not to advise his Majesty to cause the Patent to be called in Question; for though they doubted not, upon the Opinion of his learned Counsel, that the same would be adjudged void and illegal, yet they did not think it a reasonable Time when the Nation is so active and industrious in foreign Plantations, that they should see a Charter or Patent questioned, and avoided, after it had been so many Years allowed and countenanced, and under which it had so long flourished, and was almost grown to Perfection; and that since his Majesty had declared, that notwithstanding any Right of his own, all possible Care should be taken for the Satisfaction of the Creditors, as well as for the Preservation and Support of the Plantation, it would be equally equitable and honourable in his Majesty, not to leave the Earl of *Kinnoul* the only Person unconsidered, and bereaved of all his Pretence; but that they would humbly move his Majesty, that he would graciously vouchsafe to assign some present Maintenance to the said Earl, which his unhappy Condition required, out of the Revenue which should be there settled, and until the Debts should be paid; and that after that time  
such



such an Augmentation might be made to him as his Majesty in his Royal Bounty should think fit; in consideration whereof the Earl should procure the Patent to be brought in and surrendered: Which he promised should be done accordingly, as soon as the Settlement should be made of that Proportion which should be assigned to him.

That the Lord *Willoughby* should enjoy the Benefit of his former Contract with the Earl of *Carlisle*, and approved by his Majesty, during the remainder of those Years which are not yet expired; that he should make what Haste he could thither, and call an Assembly, to the end that such an Imposition might be agreed upon to be paid to his Majesty as should be reasonable, in consideration of the great Benefit they had already and should still enjoy, in being continued and secured in their several Plantations, of which as yet they were as it were but Tenants at Will, having no other pretence of Right but the Possession; and therefore, that those Merchants and Planters who had petitioned the King, should, according to their Obligation and Promise made by them to his Majesty, use all their Credit with those in the Island, that the Imposition might arise to such a Proportion that the Revenue might answer the Ends proposed, and that one Moiety of that Revenue should be enjoyed by the Lord *Willoughby* for his Term.

That the Annuity of Three hundred Pounds a Year should be paid to the Earl of *Marlborough*, according to the original Contract mentioned before; and that the Assignment that his Majesty would likewise be pleased to make to the Earl of *Kinnoul*, should be likewise first paid; and then that the remainder of that Moiety should be received to the Use of the Creditors; and that when the Lord *Willoughby's* Term should be expired, his Majesty should be desired, after the Reservation of so much as he should think fit for the Support of his Governor, that all the remainder might be continued towards the Creditors, whilst their just Debts should be paid.

These Particulars appearing reasonable to the Lords, all Persons concerned were called, and the same communicated to them, who appeared all well contented; and thereupon the Lords resolved to present the same to his Majesty, which they did accordingly at the Board, and his Majesty with a full Approbation and Advice of the whole Council ratified the same; whereupon that Order was made by his Majesty in Council, which comprehends all the Particulars mentioned before, which was delivered to the Lord *Willoughby*, with his Majesty's express Command, that he should see it punctually and precisely executed; and the like Order was delivered by the Clerk of the Council to every other Person mentioned, who desired the same: To which Order I do for the more Certainty refer myself, being in no degree confident (having at this time no other Help than my Memory) that it is set down with that Exactness as it ought to be. As I have throughout this Affair taken very great Pains to reduce it to this particular Agreement, which at that time seemed to be satisfactory to all the Persons concerned, so I had not the least Temptation of particular Benefit to myself; and I do still believe it to be very just, and reasonable, and agreeable to his Majesty's Justice and Goodness, all Circumstances be-

ing considered; and though it may be, in Strictness of Law, and by the avoiding the Grant made to the Earl of *Carlisle*, his Majesty might have possessed himself of the whole Island, without any tender Consideration of the Planters or of the Creditors, I am not ashamed that I never gave his Majesty that or the like Counsel, in this or any other Matter of the like Nature; and if I had, I am confident his Majesty would have abhorred it, and not have thought the better of me for giving it.

The other Part of this Article, That I have caused such as complained of the arbitrary Government in the Plantations before the King and Council, to be long imprisoned for so doing, doth refer, I suppose, to the Commitment of one *Farmer*; who being sent over a Prisoner by the Lord *Willoughby*, in a Ship that came from thence, made his Appearance at *Oxford*, his Majesty being then there in the Sickness-Time, which was the first time I ever heard of the Man, or of the Matter; and at the same time one of the Secretaries of State received a Letter from the Lord *Willoughby*, which was sent by the same Ship, in which his Lordship had sent a direct, full Charge of Mutiny, Sedition, and Treason against him; and by his Letter informed the Secretary of all the Behaviour and Carriage of the said *Farmer*, with all the Circumstances thereof; and that he had, by his seditious Practices, prevailed so far upon a disaffected Party in that Island, that the Lord *Willoughby* was obliged in the instant to send him aboard the Ship, without which he did apprehend a general Revolt in the Island from his Majesty's Obedience: And the Lord *Willoughby* likewise desired that *Farmer* might not be suffered to return thither before the Island should be reduced to a better Temper. The Man was called in before the King and Council, and the Charge which the Lord *Willoughby* had sent read to him: The greatest Part whereof he could not deny; and in his Discourse upon it behaved himself so peremptorily and insolently before the King, that his Majesty thought it very necessary to commit him, nor did any one Counsellor then present appear to think otherwise: And I do confess, that the discharging him from his Imprisonment was some time afterwards moved, and that I was always against his Discharge; being of Opinion that it was impossible for the Lord *Willoughby*, or any other Governor in any of the Plantations, to preserve his Majesty's Right, and support the Government, if he should be so far discountenanced, that a Man sent over by him as a Prisoner, under such a particular and so heinous a Charge, should be upon his Appearance here set at Liberty; but my Opinion was, that he should be sent back a Prisoner thither, that he might be tried by the Law and Justice of the Island, and receive condign Punishment for his Offence. And I cannot deny, but that I am still of the same Opinion; and if it be an Error, it proceeds from the Weakness of my Understanding, which is not in my Power to reform.

What I have here set down, is all that occurs to my Memory with reference to the Island of the *Barbadoes*; which being not particularly mentioned in the Article, but comprehended under the general Expression of his Majesty's foreign Plantations, I take myself obliged to give some Answer even to that General: And I hope

hope it will not be imputed as a Crime to me, if I have taken more Pains than other Men in that important Service of his Majesty concerning his foreign Plantations; which I did not think was enough taken to Heart; and if my Desire and Readiness to take any Pains, or give any Assistance to the Advancement of that Service; did induce many Persons to apply themselves to me on those Occasions, I hope it shall not be charged upon me as over Activity, or Ambition to ingross more Business into my Hands than I was intitled to; for which I have this Excuse to make for myself, that I found the Pains I took to be acceptable to his Majesty: And I was so far from having any particular Design or Advantage to myself, that I do profess and declare, that from all or any of his Majesty's foreign Plantations I never had the least Reward, or the least Present made to me, except that the now Lord Willoughby once told me, that his Brother had sent over some Pieces of the speckled Wood which grows in *Surinam*, with Direction, that if I liked it, I might have what I would of it; whereupon I had some Pieces, which I thought might have been applied to the making of Cabinets, or the adorning of Wainscot; but as they were very small, so the Middle of every Piece was wind-shaken and rotten, that they could not be applied to any considerable Use; and except some Blocks of Walnut-Tree which the Governor of *Virginia* sent to me, and of which I made some Table-Boards and Frames for Chairs, the Workmanship whereof cost me much more than the Wood was worth: And these two Particulars contain all the Rewards and Presents, or Profit, that ever I received from all his Majesty's foreign Plantations, or any body to my Use.

The Tenth Article is, *That I did reject and frustrate a Proposal and Undertaking approved by his Majesty, for the Preservation of Nevis and St. Christophers, and reducing the French Plantations to his Majesty's Obedience, after the Commissions were drawn for that Purpose; which was the Occasion of so great Loss and Damage in those Parts.*

I never did reject or frustrate any such Proposal or Undertaking, never taking upon me in the least Degree to make a Judgment of Things of that Nature, nor was ever any such Proposal made to me; but I do very well remember, that his Majesty himself did once deliver to the Council a Paper, which he said one of his Servants, Mr. *Marsh*, had delivered to him, containing some Propositions for Ships and Men to be sent by his Majesty for the Recovery of *St. Christophers*, which had been newly taken by the *French*. Upon the reading of which Paper and Propositions, the same were referred to the Consideration of the Lord-General, one of the Secretaries of State, and to the Vice-Chamberlain, as I remember, who were to confer with Mr. *Marsh*, and such others as joined with him; and they were at the same Time appointed to consider of another Proposition delivered in Writing by the now Lord Willoughby and some Merchants of *London*, who were Planters in the *Barbadoes*, for the supplying and better securing that Island, and the rest of those *Caribbee* Islands; and for the reducing and recovering any of them which were or should be taken by the Enemy; upon the latter of which somewhat was afterwards done:

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And if the other concerning *Nevis* and *St. Christophers* was rejected, of which I know nothing, I presume it was, because it either appeared unpracticable, or not consistent with his Majesty's other Affairs.

The Eleventh Article is, *That I advised and effected the Sale of Dunkirk to the French King, being Part of his Majesty's Dominions, together with the Ammunition, Artillery, and all Sorts of Stores there, and for no greater Value than the said Ammunition, Artillery, and Stores were worth.*

It is very well known to his Majesty, and to several Persons yet alive, that the parting with *Dunkirk* was resolved upon before ever I heard of it; and that the Purpose was therefore concealed from me, because it was believed that I was not of that Opinion, and that I would not concur in the Advice. When it was afterwards proposed and debated, when I was present, there likewise attending upon his Majesty and his Royal Highness, the late Lord Treasurer, two Secretaries of State, and some other of the Lords of the Council; the Reasons that were given for the parting with it, were, *first*, That the Profit which did or could accrue to the Kingdom by keeping it, was very inconsiderable, whether in War or Peace; that by Sea it was very little useful, it being no Harbour, nor having Place for our Ships to ride safe in; and that if it were in the Hand of the Enemy, it could do us little Prejudice, because three or four Ships might block it up, and keep it from infesting their Neighbours; and that though heretofore it had been a Place of Licence at Sea, and had much obstructed Trade by their Men of War, yet that that proceeded only from the Unskilfulness of that Time, in applying proper Remedies to it; which was manifest by *Cromwell's* blocking them up, and restraining them when he made War upon them, insomuch as all the Men of War left that Place, and betook themselves to other Harbours; that it was so weak to the Land (notwithstanding the great Charge his Majesty had been at in the Fortifications, which were not yet finished) by the Situation and the Soil, that it required as many Men within to defend it, as the Army should consist of that besieged it; otherwise, that it could never hold out and endure a Siege of two Months, as appeared clearly by its having been taken and retaken so many Times within the late Years; in all which Times it never held out so long, though there was always an Army at no great Distance to relieve it. *Secondly*, That the Charge of keeping and maintaining it, without any Accidents from the Attempt of an Enemy, did amount unto above One hundred and twenty thousand Pounds a Year; which was a Sum the Revenue of the Crown could not support, without leaving many other Particulars of much more Importance unprovided for; and this was not lightly urged, but the State of the Revenue, and the constant and indispensable Issues were at the same Time presented. *Thirdly*, It could not reasonably be believed, but that if *Dunkirk* were kept, his Majesty would be shortly involved in a War with one of the two Crowns: The *Spanish* Ambassador had already demanded the Restitution of it in Point of Justice, it having been taken from his Master by the late Usurper, in a Time when there was not only a Peace between his Majesty and the

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King of *Spain*, but when his Majesty resided and was entertained by the Catholick King in *Flanders*; and, at the same Time, both *France* and *Spain* inhibited their Subjects from paying those small Contributions to the Garrison at *Dunkirk*, and endeavoured to restrain the Governor himself from enjoying some Privileges which had been always enjoyed by him, from the Time that it was put into *Cromwell's* Hands; and it was then conceived, that as it would be very hard for the King to preserve a Neutrality towards both Crowns, even during the Time of the War between them (which Temper was thought very necessary for his Majesty's Affairs) so it would be much more difficult long to avoid a War with one of them upon the keeping of *Dunkirk*, if the Peace that was newly made should remain firm and unshaken. Upon these Reasons (the major Part whereof were out of my Sphere, and I could only govern myself by the Opinion of those who understood Matters of that Nature, nor could I answer any of the Arguments which have been offered) his Majesty resolved to ease himself of the Burthen of maintaining *Dunkirk*, and to part with it in such a Manner as might be most for his Advantage and Benefit. There remained then no other Question, than into what Hand to put it; and the Measure of that was only who would give most Money for it, there being then no Inclination to prefer one before another. It was enough understood, that both Crowns would be very glad to have it, and would probably both make large Offers for it; but it was then as evident, that whatsoever *France* should contract for, the King might be sure to receive, and the Business would be soon dispatched; whereas, on the other hand, it was as notorious, and as evident to his Majesty, and to all who had any Knowledge of the Court of *Spain*, and of the Scarcity of Money there and in *Flanders*, that how large Offers soever the *Spaniard* might make, they could not be able in any Time to pay any considerable Sum of Money; and that there would be so much Time spent in Consults between *Madrid* and *Brussels* before it could be dispatched, that the keeping it so long in his Majesty's Hands would be an intolerable Burthen to him; besides that, it seemed then probable that the *Spaniard* would shortly declare himself an Enemy, for besides that he demanded *Dunkirk* as of right, so he likewise required the Restitution of *Tangier* and *Jamaica* upon the same Reason, and declared that without it there could be no lasting Peace between *England* and *Spain*, and refused so much as to enter upon a Treaty of Alliance with the King, before he would promise to make such a Restitution. There wanted not in this Conference and Debate the Consideration of the States of the *United Provinces*, as Persons like enough to desire the Possession of *Dunkirk*, from whence they had formerly received so much Damage, and were like enough to receive more whenever they should be engaged in any War; and if in Truth they had any such Desire, more Money might reasonably be required of them, and probably be obtained, than could be expected from either of the Kings. But upon Discussion of that Point, it did appear to every Man's Reason very manifest, that though they had rather that *Dunkirk* should be put into the Hand of the *Spaniard* than delivered to *France*, or than it should be detained by the

*English*, yet they durst not receive it into their own Possession; which neither of the Kings would have approved of; and so it would have exposed them to the Displeasure, if not to the Hostility of both Crowns. Upon this full Deliberation, his Majesty inclined rather to give it up to *France* than to *Spain*; but deferred any positive Resolution till he had imparted the Matter to the Council-Board, where the Debate was again resumed, principally concerning the keeping or the parting with it; in which Debate the Memory and Mention of what hath been done in the House of Commons heretofore upon that Subject was not omitted, nor the Bill that they had sent up to the House of Peers for annexing it inseparably to the Crown; but after a long Debate of the whole Matter, there was not, as I remember, above one Lord of the Council who offered his Advice to his Majesty against his parting with it; and the Ground of that Lord's dissenting was enough understood to have nothing of Publick in it. In conclusion, his Majesty resolved, for the Reasons aforesaid, to put it into the Hands of *France*, if that King would satisfy his Majesty's Expectation in the Money he would require for it.

Monsieur *D'Esstrades* came privately over to treat upon it without any Character; but pretending to make it his Way for *Holland*, whither he was designed for Ambassador. After he had waited upon the King, his Majesty appointed four or five of the Lords of his Privy-Council (whereof I was required to be one) to treat with Monsieur *D'Esstrades* upon the Sale of *Dunkirk*; and at that our first Conference together, after we had in vain endeavoured to persuade him to make some Offer, we did demand the Sum of seven hundred thousand Pounds Sterling to be paid by the King of *France* for the Delivery of *Dunkirk* and *Mardyke* (which is always understood to be included when *Dunkirk* is mentioned) into his Possession. Which Sum appeared to him so stupendous, that he seemed to think the Treaty at an end, and resolved not to make any Offer at all on the Part of the King of *France*; and so the Conference broke up. At the next Meeting he offered three Millions of Livres, which, according to the common Account, amounted to three hundred thousand Pistoles; which we as much undervalued: So that any further Conference was discontinued till he had sent an Express or two into *France*, and till their Return; and afterwards, upon our insisting upon what he thought too much, and his Offer of what we esteemed too little, the Treaty seemed to be at an end, and he preparing for his Return. In conclusion, his Majesty being fully as desirous to part with it, as the King of *France* could be to have it, it was agreed and concluded, that upon the Payment of five hundred thousand Pistoles in Specie at *Calais* to such Persons as the King should appoint to receive it, his Majesty's Garrison of *Dunkirk* should be withdrawn, and that Place put into the Hands of the King of *France*: All which was executed accordingly; and I believe was a greater Sum of Money than was ever paid at one Payment by any Prince in *Christendom*, upon what Occasion soever. And that all this should not amount to a greater Value than the Ammunition, Artillery, and Stores were worth, which were delivered with it, is very strange, and cannot be supposed by any reasonable Computation.

putation. I do very well remember, that in the Treaty, we did with much Earnestness and Resolution insist upon the detaining and transporting into *England* the Cannon and other Artillery and Ammunition; but Monsieur D'Estrades would not consent to it, it being, as he said, necessary for the Defence of the Place, which probably might be attacked by the *Spaniard* within few Days after it should be delivered into the Hands of the *French*; and upon our inserting that Exception of the Cannon and Ammunition in our Demand, he was at last induced to consent to the Payment of five hundred thousand Pistoles, which he had never before yielded unto; and when his Majesty plainly discerned that the King of *France* would in Truth give no more, and had caused some Estimate to be made of the Cannon and Ammunition, the Value whereof, as I remember, was not thought to arise to more than twenty thousand Pounds Sterling, or thereabouts, his Majesty resolved to accept what was offered, for which I have not heard that he hath ever since been sorry; and his Majesty did at the same Time resolve, and positively declare, that all the Money which should be received for *Dunkirk*, should be brought to and deposited in the Tower of *London*, and no Part of it applied to any ordinary Occasions, but to be preserved for some pressing Accident, as an Insurrection, or the like, which was reasonably enough apprehended; and I presume it was all issued out in such a Manner, and at such Seasons, as his Majesty found necessary for his most important Affairs; of the Particulars whereof I can say nothing. This is all I can say concerning the Sale of *Dunkirk*, and of my Part in that Transaction: To which I shall only add, that I acted that Part in it which I was obliged by my Duty to do, in Obedience to the King's Commands; and that before, or in, or after the Transaction, I never received the Value of one Shilling for Reward, or Present, or any other Consideration relating to that Affair; and I believe the Treatment I have received since my coming into *France*, is an unquestionable Evidence that that King did never take himself to be beholden to me for that, or any other Service, as in Truth he never was.

The Twelfth Article is, *That I did unduly cause his Majesty's Letters Patents under the Great Seal of England, (to one Dr. Crowther) to be altered, and the Inrollment thereof to be unduly razed.*

When I first heard of this Charge, I could not comprehend what the Meaning of it was, being most assured that I had never caused any Alteration to be made in any of his Majesty's Letters Patents under the Great Seal, or the Inrollment thereof to be razed; but upon Enquiry I was informed, that Dr. Crowther, who was Chaplain to his Royal Highness the Duke of *York*, and had attended upon his Person during the whole Time that his Highness was beyond the Seas, upon his Majesty's Return into *England*, had obtained from the King his Royal Presentation to the Parsonage of *Treddington* in the County of *Worcester*; which Presentation, according to Course, passed under the Great Seal of *England*; that when he brought his Action upon the Presentation against the Intruder, who refused to give him Possession, and the Record was carried down to the Assizes in the Country, when the Doctor's Counsel was to open his Title, and thereupon was to produce

the King's Presentation, they found, upon Perusal thereof, that either by Misinformation, or Negligence of the Clerk, instead of the County of *Worcester*, where the Rectory was; the County of *Warwick* was inserted; upon which Mistake, the Doctor was necessitated to be Nonsuited: and thereupon he forthwith made a Journey to *London*, to advise with his Counsel, and the most experienced Clerks, how to recover the Misfortune that had befallen him, and that his Majesty's Right might not be destroyed by such an Oversight in the Clerk; and it seems he was by them advised, as the usual Way in Cases of that Nature, to Petition the King, that, in his Majesty's Presence, the Presentation might be mended, and *Worcester* inserted instead of *Warwick*, and that thereupon the Great Seal might be again affixed to it; all which was done accordingly, as in such Cases is usual. And this is all I know of that Affair.

The Thirteenth Article is, *That I have in an arbitrary Way examined and drawn into Question divers of his Majesty's Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties; determined thereof at the Council-Table, and stopped Proceedings at Law, and threatened some that pleaded the Statute of 17 Car. 1.*

I must here again lament my own Misfortune, that I am exposed to publick Reproach under a general odious Charge, without inserting any one Particular; to which I might make my Defence: I have therefore no more to say, but that I am very innocent as to any Crime laid to my Charge in this Article; and I have been so far from examining and drawing into Question any of his Majesty's Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties, and determining the same at the Council-Table, and stopping Proceedings at Law, that I do not know or believe that any one Case of that Nature hath been ever determined there, at least when I have been present; I having always discountenanced all such Addresses, and procured all Petitions of that Kind to be rejected as often as they have been tendered; and I take myself obliged to say, for the Vindication of his Majesty's Honour and Justice, that there have not been so many Years passed since the Erection of the Council-Table, with so little Disturbance or Disquiet to the Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties, as hath been since his Majesty's happy Return, nor hath the ordinary Course of Proceeding at Law been less obstructed.

The Fourteenth Article is, *That I did cause Quo Warranto's to be issued out against most of the Corporations of England by Act of Parliament, to the Intent I might receive great Sums of Money from them for renewing their Charters; which when they complied withal, I caused the said Quo Warranto's to be discharged, and Prosecution thereon to cease.*

I never caused any *Quo Warranto* to issue out against any one Corporation in *England*, but by his Majesty's express Command, or by Order of the Board; which was always upon some Miscarriage or Misbehaviour in the Corporation: And I do not remember that I ever moved the King against any particular Corporation, but that of *Woodstock*; and which my Duty to his Majesty obliged me to do, being intrusted by his Majesty with



with the Command of his House and Parks there, and being his Majesty's Steward of his Honour and Manor of *Woodstock*, upon which the Borough had always depended. His Majesty having conferred that Charge upon me; I was no sooner possessed of it by the Death of the late Earl of *Lindsey*, who enjoyed that Place before, than I received a Petition from several Inhabitants and Burgesses of the Borough of *Woodstock*, who complained that the Mayor and Justices had lately procured their Charter to be renewed, without the Privy or Consent of the Borough; and that under Pretence of renewing it, they had procured many new Clauses to be inserted, and thereby reduced much of the Government, which before depended upon the whole Corporation, into their own Hands; and had thereby likewise procured a Piece of Ground, the Benefit whereof did formerly belong to all the Burgesses, and was usually applied to the Relief of such of them who were decayed in their Estates, to be now granted to the Mayor, and a select Number of the Justices, and the Profits thereof to be at their Disposal, to the great Prejudice of the Borough and the Inhabitants thereof. I referred this Petition to Mr. Justice *Morton*, who lived within four or five Miles of *Woodstock*, and desired him to examine the Truth of these Allegations, and to certify me whether the Complaints were just and reasonable: Whereupon, he took the Pains to go over to the Town, and confer with the Mayor and Justices, and heard the Allegations of the Petitioners; and upon the whole Matter certified me, that he found several important Alterations in the new Charter from what had been in the old, and some new Concessions; and at the same Time, Sir *William Fleetwood*, who is Ranger of the Parks, certified me, that since the renewing of their Charter, the Mayor and Justices were not so good Neighbours to his Majesty's Game, as they had formerly been, and had withdrawn many of those Services which they had used to perform; and that when any Trespasses were committed by those of the Borough upon his Majesty's Woods or Game, which happened very frequently, and Complaint was thereof made to the Mayor and Justices, who had the sole Jurisdiction within the Borough, there was so slight and perfunctory Examination thereof, that the Prosecutors were wearied out, and no Justice could be obtained. It was my Duty to inform his Majesty of these Proceedings, who was much offended thereat, and thereupon gave Directions to his Attorney-General to bring a *Quo Warranto*, and to repeal that Charter which had been so unduly procured, and in which his Majesty had been so grossly deceived and abused; and I believe there was the less Vigour used in the Prosecution of that *Quo Warranto*, because the Mayor and Justices for some Time pretended that they would surrender the said Charter, and receive a new one in such Manner as his Majesty thought fit, though they afterwards changed their Mind. And this is the only Charter which I gave Direction for the Prosecution of, to the best of my Memory: Nor did I ever give Direction, upon the Receipt of any Money, to discharge any *Quo Warranto's*, or cause the Prosecution thereupon to cease; nor did I ever receive the least Sum of Money for the granting or renewing any Charter, other than the usual Fees received for the same by the Clerk of the Hannaper, and accounted to the Great

Seal; which Fee, as I remember, amounts to thirteen Shillings and four Pence, or thereabouts.

The Fifteenth Article is, *That I procured the Bills of Settlement for Ireland, and received great Sums of Money for the same, in a most corrupt and unlawful Manner.*

I do confess, if I have received the least Sum of Money for or upon the passing any Bills for the Settlement of *Ireland*, I have done the same in a most corrupt and unlawful Manner; nor indeed have I been more solicitous in procuring any of the said Bills to pass, or been more concerned in or for the passing them (except for his Majesty's Service, and the Publick Peace) than any other Counsellor present at those Debates hath been; but because this Aspersion upon my Honour and my Honesty hath been by so much Industry contrived by some Men, who very well know my Innocence in that Particular, and may yet have gained Credit with many upon the Confidence of bold Reporters; I do not know a better Way for my own intire Vindication, than to set down an intire Relation of all that hath passed by my Hand, or with my Privy, with reference to *Ireland*, since the Time of his Majesty's happy Return into *England*. When his Majesty found, at his coming to *Whitehall*, several Persons of Honour and Quality deputed from *Ireland*, to tender the humble Duty, Obedience, and Submission of that Kingdom to his Majesty's Government and Subjection; the present Government of *Ireland*, at that Time, being executed in a Military Way, by those who had the Command of that Part of the Army, which, upon the Revolution in *England*, had declared their Purpose and Resolution to return to his Majesty's Obedience; and there could not be too much Expedition used in settling it under those Laws, and that Form of Government it had been formerly accustomed to. Every body remembers the Multiplicity of Business the King was incumbent to at that Time, being to reduce his three Kingdoms to that old Order and Form of Government which they might in Justice require, and which for so many Years had, by the Confusion of the late Civil War, been discontinued; and therefore it will not be much wondered at, that the Settlement of *Ireland* did not proceed with that Expedition as the distracted Interests of that Kingdom did require.

Within few Days after the King's Arrival at *Whitehall*, the Commissioners or Deputies from *Ireland* (for I know not under what other Name or Title to mention them) taking Notice of the Trust the King then reposed in me, (a greater Trust, God and the King well know, than I was in any Degree ambitious of) addressed themselves to me, desiring that I would receive from them an Information of the present State and Condition of that Kingdom; which his Majesty had likewise commanded them to impart to me; and that I would assist them in procuring his Majesty's Favour, that as little Time might be lost as was possible, in endeavouring to settle and compose the distracted Condition of that Kingdom: And upon Conference with them, I quickly found that it was in a distracted Condition indeed; so hopelessly distracted, that I could not comprehend any practicable Way to compose it. There had been an Act of Parliament made in the Beginning of the

the Rebellion for the Encouragement of Adventurers; that was, to encourage all Persons to bring in Money for the carrying on the War, upon the Assurance of having a Recompence for their Money out of the forfeited Lands of those who were or should be in Rebellion, according to an Estimate of the Values by the said Act of Parliament; in which, for their better Security, there was likewise a Clause, that his Majesty should not grant a Pardon to any of those Rebels: And upon this Invitation many honourable Persons, and others, had brought in great Sums of Money for the carrying on that War, upon the Security aforesaid. But the Rebellion shortly breaking out in *England*, the Persons in Power in both Houses quickly violated that whole Act, by taking the Monies raised, and lent for the Service of *Ireland*, without, and contrary to the Consent of those who lent it, and applying it for the Support of the Rebellion in *England*; and employed those Regiments of Horse and Foot, who were levied for *Ireland*, to serve against the King, under the Command of my Lord of *Essex*, and who did serve under his Command, at the Battle of *Edge-Hill*; where some of them, out of the Detestation of being so betrayed into Rebellion, quitted my Lord *Essex* his Army, and went over to the King. The Service of *Ireland* being thus neglected, and to such a Degree that the Rebels there increased in Number and in Strength, many Persons of Honour in that Nation, who had contained themselves within their Obedience, and were in no Degree privy to the first Insurrection and breaking out into Rebellion, found it now necessary for their own Preservation, to secure themselves in those Towns and Places which were possessed by the Rebels, and so joined with them in their Counsels; yet making all the Professions of Duty to the King, and of an impatient Desire to return to their Subjection; which many of them made good afterwards upon the first Opportunity. By this means the Rebels in *Ireland* advanced every Day in Power, and had several Armies in the several Provinces of the Kingdom, much superior in Power to the *English* Forces, whilst they were every Day diminished by their want of Victuals, want of Cloaths, and want of Pay, which the Parliament neglected to supply them with, and the King could not. His late Majesty, after above a Year's Time that the Rebellion in *England* had been prosecuted against him, notwithstanding all Overtures of Accommodation, found it necessary to make a Cessation in *Ireland*; which was after some Years transacted into a Peace, which though it was quickly afterwards most wickedly and perfidiously broken by the *Irish* to their own Destruction, yet many principal Persons of Honour and good Fortune adhered afterwards constantly to the King, without ever swerving from their Allegiance; and such Men believed the full Benefit of that Peace, in being restored to their Estates which did in Justice belong to them, and expected the same accordingly.

After the Murder of his late Majesty, the King that now is receiving an Address from his *Roman Catholick* Subjects in *Ireland*, with great Acknowledgments of their past Crimes and Errors, and of ample Professions of their Duty and Obedience for the Time to come, during the Time of his being in *France*, I sent the Lord Marquis of *Ormond* into *Ireland* as his Lieutenant of

that Kingdom, and with Authority to make such Concessions to his *Roman Catholick* Subjects as might unite them to his Obedience; and that thereby such an Union might likewise be made between his *English* and *Irish* Subjects (the Lord *Inchiquin* having reduced the whole Province of *Munster*, and the Army, and Garrisons thereof, to make Profession of Fidelity to their King,) that *Dublin* might quickly be recovered, which was the only considerable Place that then continued in Rebellion, and in which there were very many, of known Affections to the King, who would quickly have rendered that City to the Lord Lieutenant, if a great Supply from the Parliament, immediately after the Murder of the late King, had not unhappily arrived the very Day or Two before the Marquis of *Ormond* marched with his Army to recover *Dublin*; and within very few Weeks after, *Cromwell* himself landed there with a great Army of Horse and Foot, and all Provisions necessary for the Support and Maintenance of it.

It is not necessary in this Place, and upon this Occasion, to mention what befel that unhappy Kingdom after *Cromwell's* Arrival there; the quick and speedy Reduction of Towns and Garrisons, the dissolving and dismissing of the Troops and Army under the Command of the Lord Lieutenant, and he being forced to withdraw himself out of the Kingdom, and to return into *France*; which, although it proceeded from the miserable and foolish Jealousies of the *Irish*, and then from their Treachery and Perfidiousness, yet those Crimes did not cover the whole Nation, yet there remained still very many Persons of Honour and Quality, who never after were faulty to his Majesty, and therefore expected the Benefit of the last Peace, likewise confirmed by his Majesty that now is, as of Justice belonging to them; and many of this Condition (some whereof had never been in Arms against the Crown, but had faithfully served in his Majesty's Army in *England* during the whole Rebellion) transported themselves to his Majesty beyond the Seas, and many others were taken and put to Death in *Ireland*.

After all Opposition to the Parliament was totally suppressed in *Ireland*, and the Kingdom entirely at their Devotion, they began then to think of executing the Act of Parliament of the Seventeenth Year of the late King, for Satisfaction of the Adventurers: But as they had from the Beginning violated that Act, by the misapplying the Men and the Money, as aforesaid; so they now preferred the gratifying and rewarding, and paying the Arrears due to the Officers and Soldiers, by assigning them liberal Proportions of the Lands which they called forfeited, before they did any thing for Satisfaction of the Adventurers, except such only who for some other Merit or Interest had a Title to their Favour; and amongst the forfeited Lands they reckoned all that which belonged to the Church, to the Marquis of *Ormond*, the Lord *Inchiquin*, and all those who had adhered to the King, and constantly opposed the Rebels there, as Part, and distributed the same accordingly. So that at this Time, when the Commissioners for that Kingdom attended his Majesty, the Officers and Soldiers of the Army, and some Adventurers, were and had been in quiet Possession for many Years of all the Church-Lands, of all the Marquis of *Ormond's*



Lands, and the Lands of all other his Majesty's faithful Friends and Servants; and yet there remained a general Complaint amongst the Adventurers, that they were in no degree satisfied what was due to them upon their Adventures by the Act of Parliament, and desired the King that they might receive what was their Due.

*Cromwell* had not exercised such a Severity as to eradicate the whole *Irish* Nation; but had transplanted them with so great Rigour out of the other Provinces into the Province of *Conoughb*, that there was scarce left one *Irish* Family out of *Conoughb*, where the Usurper had assign'd them severally such Proportions as he thought Recompence enough for the small Possessions he had formerly allowed them out of their own Estates, in those Places where their Fortunes had lain: And to this Transplantation they had been forced to give their Consent, having had nothing in their Election but either to accept these Assignations, or to have nothing to live upon in any other Place. But now, upon his Majesty's Return, as well those Men who had been transplanted thither out of other Provinces, as those upon whose Lands the other were transplanted as forfeited to the State, were now Suitors to the King, that every one might be restored to his own; and that their past Crimes might be expiated by the extreme Sufferings they had sustained for many Years; and that those Men who had been as deep in Rebellion as themselves, and continued much longer, and prospered better in it, might not be gratified and rewarded with their Estates and Fortunes.

Many Persons of Honour and Reputation, as is said before, had repaired to the King whilst he was beyond the Seas, and followed and attended him there; many Regiments had been raised and transported with the Consent and Approbation of *Cromwell*, for the Service of the two Crowns of *France* and *Spain*; and many of those Officers had served his Majesty from the Beginning, and had never been in Rebellion, and upon his Majesty's Command, when he was in *Flanders*, brought their Regiments over thither to serve as he should direct: And as the King had kept Intelligence always with many of his well-affected Subjects in *England*, and in *Scotland*, so he had likewise done with some in *Ireland*, to the End that they might be ready to make use of the first Opportunity that should be offered, by any Divisions in the Army, or other Conjunctions, to join with those who were most forward to advance the King's Restitution; which many considerable Men there had promised to do, and in such Seasons could have rendered themselves very useful; and all these Men had some Pretence to the King's Favour, and an Expectation to be restored, at least, to some Part of their Estates.

This was the perplexed Estate of that Kingdom when the King returned into *England*, and when these Commissioners attended upon his Majesty, and conferred with me; when I protested to them that there were so many Intricacies in the Business, and the whole Kingdom involved in so many contradictory Titles and Interests, that I knew not what Counsel to give, or what to propose; but that I would in publick Council give the best Advice and Assistance I could for the settling that Kingdom, when they should make any such Propositions to his Majesty as were practicable. That which was first to be done, and which could only make all other Ex-

pedients to be practicable, was the settling the Government in such a Form, and by such Rules, as the Kingdom had been accustomed to before the Troubles; and that the Course and Courts of Justice might be opened. Then the Commissioners themselves proposed, as the first Work incumbent upon his Majesty, in Piety, Honour and Justice, that all such to whom the Lands of the Church, the Lands of the Marquis of *Ormond*, and of all his Majesty's Friends who had been faithful to him, should be forthwith removed, that the right Owners might immediately be put in Possession of what in Right belonged to them; which was the more easily to be done, because much of those Lands remained undisposed of, and reserved for *Cromwell* himself, and much of the rest had been assigned to those Officers who had been the King's Murderers; and so those Lands were free from all other Title or Pretence, but what the King himself could make to them. But then there was some Caution and Order to be observed; first, to assign other Recompence to such who were possessed (how erroneously soever) of any Lands, either as Adventurers upon the Statute, or as Soldiers, for the just Arrears of their Pay; and his Majesty had declared before his coming into *England*, that there should be Satisfaction given to all such Persons; and the Truth is, the whole Kingdom of *Ireland* was at that Time so much possessed by the Adventurers and Soldiers, that it was thought very necessary in Point of Prudence to remove none out of Possession of what had been formerly assigned to them, and according to the Rules of that Time, until some other Lands were assigned to them; which was not difficult to be done. Then the Commissioners, discerning how much his Majesty was concerned for many of those who had served him beyond the Seas, and for others who claimed the Benefit of the first and second Treaty, undertook that his Majesty should not be pressed in any of those Particulars, but that all such Persons should be preserved, and their Estates secured; and thereupon a Preamble was prepared, containing those Provisions which were approved by the Commissioners, who undertook to have such a Bill transmitted as might be the Foundation for a good Settlement, and in which his Majesty might make such Alterations as he did think fit.

There were more Difficulties appeared in settling the Government than were at first apprehended; and nothing was so necessary as sending over the King's Commission, which might determine all other Authorities of Committees and Officers, in which Men had been invested by a Common Consent, or rather by the Prevalence of a Party, which already grew into Factions and Contestations. The General, who had contributed so much to the King's Restoration, and appeared very zealous for the Advancement of his Service, had been by the Parliament and Council of State (as they called them) declared and created General of all the Forces in the Three Kingdoms; and so his Orders had been obeyed, as well in *Scotland* and *Ireland*, as in *England*, before his Majesty's Return; and the King did not think fit in any degree to lessen his Trust and Authority, nor had the General any Inclination to part with his Power in *Ireland*, where he had procured a great Estate, and could best secure it under his own Authority; and yet he resolved not to go thither, and indeed his Presence then about

about the King was thought very necessary. Hereupon, the King declared that he would make the Lord *Roberts* Deputy of *Ireland*; who was willing to receive that Charge, knowing at the same Time, that the Duke of *Albemarle* was to continue Lieutenant of that Kingdom. But there quickly arose such Differences between the General and the Lord *Roberts*, about the drawing their Commissions, the latter being so scrupulous and nice in having the least Dependence upon the General, though Lord Lieutenant; and his Pride and Morosity was such towards the Commissioners of *Ireland*, that they withdrew themselves from giving him further Attendance and Information; so that his Majesty quickly discerned, that though he was a Man of great Parts and Knowledge, yet his Nature and Temper was not fit for that Employment, and therefore resolved for the present to put the Government into the Hands of three Lords Justices, the Lord Chancellor of that Kingdom, the Earl of *Montrois*, and the Earl of *Orrery*, who might begin to reduce the Government into some Order, until his Majesty could take a further Resolution for the Establishment of it.

As soon as a Bill was transmitted, according to the usual Course, to his Majesty, for the Settlement of *Ireland*, with such a Preamble as is before mentioned, though the Body of the Bill did not in Truth correspond with it; his Majesty gave Direction, that it should be shewed and exposed to those of the several Interests, even to the *Irish* themselves, who were the most like to receive Prejudice from it: And after a sufficient Time allowed for every Man's Consideration, his Majesty appointed a Time to have it read at the Board, and to hear what Objections could be made against it. The great Debate then was upon the Pretences of the *Irish*, who appeared with marvellous Confidence, and complained, that by that Act then prepared, and under Consideration, the whole *Irish* Nation would be extirpated, all their Estates being thereby taken from them. As the present Government in *Ireland*, which had declared for the King, had sent over Commissioners or Deputies to attend his Majesty, and know his Pleasure, as is mentioned before; so the Body of Adventurers had likewise chosen some Persons to present their Grievances and Desires: and the *Irish*, under the Names of the *Roman Catholics* of *Ireland*, had likewise chosen others to appear on their Behalf, whereof some were Lawyers and Men of good Parts, who well knew all the Transactions in *Ireland* from the Beginning of the Rebellion, throughout all the Changes of Government: The chiefest Arguments they urged for themselves were, *First*, their long and great Sufferings; the Loss of their Estates for Five or Six and Twenty Years; the wasting and spending of the whole Nation in Battles, and in Transportation of Men into the Parts beyond the Seas; whither, as I remember, they reckoned above Twenty Thousand Men to be transported out of that Kingdom in Four or Five Years; the great Numbers which had been executed and massacred after his Majesty's Government had been forced from thence; the great Numbers which had perished by Famine and the Plague; those two great Judgments having raged over the Kingdom for two or three Years; and at last the transplanting the small Remainder of the Nation into one Cor-

ner of the Province of *Conought*, where yet much of the Land was taken from them, which had been assigned to them with all those Formalities of Law which were practised under that Government. *Secondly*, They demanded the Benefit of the two Treaties of Peace; the one in the late King's Time, and the other confirmed by his Majesty that now is; by both which they stand indemnified for all Acts done by them in the Rebellion; and insisted upon their Innocence since that Time, and that they had pursued all Ways that were in their Power to manifest their Affection to his Majesty, and so entire an Obedience to his Commands whilst he was beyond the Seas, that they betook themselves to, and withdrew themselves from, the Service of *France* or *Spain*, in such manner as his Majesty signified was his Pleasure they should do. *Thirdly*, they urged, and forced with a little more Liberty and Indiscretion than became them in that Conjecture, the Unworthiness and Incapacity of those who for so many Years had possessed themselves of their Estates, and sought now a Confirmation of their rebellious Title from his Majesty: That their Rebellion had been more infamous, and of a greater Magnitude than that of the *Irish*; who had risen in Arms to free themselves from the Rigour and Severity that was exercised upon them by some of the King's Ministers, and for the Liberty of their Conscience and Practice of their Religion, without having the least Intention or Thought of withdrawing themselves from his Majesty's Obedience, or declining his Majesty's Government: Whereas, the others had carried on an odious Rebellion against his Majesty's Sacred Person, whom they had horridly murdered in the Sight of the Sun, with all imaginable Circumstances of Contempt and Defiance, and as much as in them lay, had rooted out Monarchy itself, and overturned and destroyed the whole Government of Church and State; and therefore that whatever Punishment the poor *Irish* had deserved for their former Transgressions, which they have so long since repented of, and departed from the Rebellion when they had Armies and strong Towns in their Hands, and put themselves again under his Majesty's Protection; this Part of the *English*, who were possessed of their Estates, had broken all their Obligations to God and the King, and so could not merit to be gratified with their Ruin and total Destruction: That it was too evident and notorious to the World, that his Majesty's Three Kingdoms had been very faulty to him, and withdrawn themselves from his Government, by which he had been compell'd to live in Exile so many Years; and yet, that upon their Return to their Duty and Obedience, his Majesty had been graciously pleased to grant a free and general Pardon, and Act of Indemnity, in which many were comprehended who had in truth been the Contrivers and Fomenters of all the Misery and Desolation which had involved the Three Nations for so many Years; and therefore they hoped, that when all his Majesty's other Subjects (as criminal at least as the others) were, by his Majesty's Clemency, restored to their own Estates which they had forfeited, were in full Peace and Mirth and Joy, the poor *Irish* alone should not be totally exempt from all his Majesty's Grace, and left in Tears and Mourning and Lamentation, and be sacrificed without Redemption to the Avarice and



and Cruelty of those, who had not only spoiled and oppress'd them, but had done all that was in their Power, and with all the Insolency imaginable, to destroy his Majesty himself, and his Posterity, and who now return to their Obedience, and submitted to his Government, when they were no longer able to oppose it; nor did they yet return to it with that Joy and Alacrity and Resignation as the *Irish* did, and desired to do: And so concluded with those pathetic Applications and Appeals to his Majesty, as Men well versed in Discourses of that Nature are accusom'd to do.

This Discourse carried on, and urged with more Passion, Vehemence and Indiscretion, than was suitable to the Condition they were in; and in which, and the Excesses of their Rhetorick, they had let fall many Expressions very indecent and unwarrantable, and in some of them confidently excused, if not justified their first Entrance into Rebellion, (the most barbarous certainly, and unexcusable, that any Christians have been engaged in, in any Age,) they irreconciled themselves to many who had Compassion enough for them, and gave their immediate Adversaries (who stood upon the advantage Ground) both Provocation and Opportunity to say many Things to their Reproach, which probably would else have been forborne. They enlarged upon all the odious Circumstances of the first Year's Rebellion, the murdering of above a Hundred Thousand Persons in cold Blood, and with all the Barbarity imaginable; which Murthers and Barbarities had been always excepted from Pardon: And they told them, that if there were not some amongst themselves that then appeared, they were sure there would be many found amongst those for whom they appeared, who would be found guilty of those odious Crimes, which were excluded from any Benefit by those Treaties. And so that first Agitation before his Majesty vented itself in so much Bitterness and Animosity on both Sides, that his Majesty thought it best to conclude it with such Reprehensions and Animadversions, as might dispose them to a better Temper when they should be next admitted to his Majesty's Presence.

At their next Attendance upon his Majesty, which was within few Days after, the Commissioners for the Protestants, taking Notice of what the other Party had alledged for their Defence; the Pretence they had to the two Acts of Pacification; and their extolling their own Innocence from that Time; and their great Affection for his Majesty's Service; declared, that whatever legal Title the Adventurers had to the Lands they were in Possession of, many of whom had always faithfully served the King; yet they would be content, that all those who had in Truth preserved their Integrity towards his Majesty from the Time of either or both the Pacifications, and not swerved afterwards from their Allegiance, should partake of his Majesty's Grace, and Royal Bounty, in such a Manner, and to such a Degree, as his Majesty thought fit to exercise towards them: But they were confident they should make it appear, that their Pretences to that Grace and Favour were not founded upon any reasonable Title; that they had never consented to any one Act of Pacification, to which the Indemnity had been annexed, which they had not violated and broken within Ten Days after, and then re-

turned to all their Acts of Disloyalty and Rebellion; that after the first Act of Pacification, ratified by the last King, in very few Days after they treated the Herald, his Majesty's Officer, who came to proclaim that Peace, with all manner of Indignity, tearing his Coat of Arms (the King's Arms) from off his Back, and beat and wounded him so, that he was hardly rescued from the Loss of his Life; that about the same time they endeavoured to surprize and murder the Lord Lieutenant, and pursued him to *Dublin*, which they forthwith besieged with their Army, under the Command of that General who had signed the Peace; they imprisoned their Commissioners who were authorized by them, for consenting to those Articles which themselves had confirm'd, and so prosecuted the War with as much Asperity as ever; and refused to give that Aid and Assistance they were obliged to, for the Recovery and Restoration of his late Majesty, who was then in Prison at the Isle of *Wight*; the Promise and Expectation of which Supply and Assistance, was the sole Ground and Consideration of that Treaty, and of the Concessions therein made to them; that they thereupon renounced their Obedience to his Majesty, and put themselves under the Protection and Disposal of *Rinucceni*, the Pope's Nuncio, whom they made their Generalissimo of all their Armies, their Admiral at Sea, and to preside in all their Councils. After their Divisions amongst themselves, and the Burthen of the Tyranny they suffered under, had disposed them to petition this King, who was then in *France*, to receive them into his Protection, and to send the Marquis of *Ormond* over again into *Ireland* to command them; and his Majesty was so far prevailed with, as to send the Marquis of *Ormond* into *Munster*, with such a Supply of Arms and Ammunition as he could procure; where the Lord *Inchiquin*, Lord President of that Province, with the Protestant Army, received and joined with him; and shortly after, the Confederate *Irish* made that second Treaty of Pacification, of which they now likewise demanded the Benefit: But that it is notoriously known, that they no sooner made that Treaty than they broke it, in not bringing in those Supplies of Men and Money which they were obliged to do, and the want whereof exposed the Lord Lieutenant to many Difficulties; and he had no sooner undergone the first Misfortune before *Dublin*, than they withdrew from taking any further Care of the Kingdom, raised Scandals upon and Jealousies of the whole Body of the *English*; who, being so provoked, would no longer venture themselves in any Action or Conjunction with the *Irish*. They caused an Assembly or Convention of the Clergy to meet without the Lord Lieutenant's Authority, and put the Government of all Things into their Hands; who, in a short Time, improved the Jealousy in the Minds of the People towards the few Protestants who yet remained in the Army, and who had served the King with all imaginable Courage and Fidelity, from the very first Hour of the Rebellion in the Three Kingdoms, to that degree, that the Marquis was even compell'd to discharge his own Troop of Guards of Horse, consisting of such Officers and Gentlemen as are mentioned before; and to trust himself, and all the remaining Towns and Garrisons, to the Fidelity of the *Irish*; protesting, that upon such a Con-

Confidence the whole Nation would be united, as one Man, to his Majesty's Service, under the Command of the said Marquis: But they had no sooner received Satisfaction in that Particular, (which was not in the Marquis's Power to refuse to give them) but that they raised several Calumnies against the Marquis himself, and declaimed against his Religion, and inhibited the People upon Pain of Excommunication, not to submit to this or that Order enjoined by the Marquis; and upon the Matter, inhibited any Obedience they paid to him: Instead of raising new Forces, those that were raised run from their Colours and dispersed themselves; they who were trusted with the keeping of Towns and Forts, either gave them up by Treachery to *Cromwell*, or lost them through Cowardice to him upon very feeble Attacks: Their Great General *Owen O Neile* had made a formal Contract and Stipulation with the Parliament; and in the End, when they had divested the Marquis of all Power to oppose the Enemy, and gave him great Cause to believe his Person to be in great Danger to be betray'd, and deliver'd up to the Enemy, they vouchsafed to petition him to depart out of the Kingdom, which they could easily compel him to do; and that he would leave his Majesty's Authority in the Hands of one of his Majesty's *Roman Catholick* Subjects, to whom they promised to submit with the most punctual Obedience. Whereupon the Marquis finding that he could not unite them in any one Action worthy of the Duty of good Subjects, or of prudent Men towards their own Preservation; and so, that his Residence amongst them longer could in no degree contribute to his Majesty's Service or Honour; and that they would make it be believed, that if he would have committed the Command into the Hands of a *Roman Catholick*, they would have been able to have preserved those Towns which still remained in their Possession, which were *Limerick* and *Galloway*, and some other Places of less Importance; and likewise by degrees recover from the Enemy what had been lost; which was very possible for them to have done, having great Bodies of Men to perform any Enterprize, and some good Officers to lead them, if they would have been obedient to any Command: Whereupon the Marquis had resolved to gratify them, in placing the Command in such a Person's Hand, whose Zeal for the Catholick Religion was unquestionable, and whose Fidelity to the King, and entire Affection, was unblemished; and so made Choice of the Marquis of *Clanrickard*, a Name, though of an *English* Extraction, had for so many Hundred Years resided in that Kingdom, and had the greatest Fortune amongst them, that he had the Reputation of being of the best Family of the *Irish*, and whose Family had, in all former Rebellions, as well as in this, preserved their Loyalty unspotted to the Crown. The *Roman Catholicks* of all kinds pretended at least a wonderful Joy at this Election, acknowledged it a great Obligation to the Lord Lieutenant for making it, and applied themselves to the other with all Protestations of Duty and Submission, to induce him to accept the Charge, who indeed knew them too well to be willing to trust them; yet upon the Marquis of *Ormond*'s earnest and solemn Intreaty, and out of his great Zeal for his Majesty's Service, and to support his Government there, until his Majesty could procure other Supplies, or

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give better Orders for the doing it, he was contented to receive such Commissions from the Lord Lieutenant, as were necessary for the Execution of that Command, and Preservation of the Government. Upon which, the Marquis of *Ormond* embarked himself, with some few Friends and Servants, upon a little *Pink* that was bound for *France*, where he arrived safely about the Time that his Majesty transported himself thither, after his miraculous Escape from *Worcester*.

The Lord Lieutenant was no sooner gone, but that the Marquis of *Clanrickard*, the new Lord Deputy, found himself no better treated than the Lord of *Ormond* had been: That Part of the Clergy which had continually opposed the Lord Lieutenant for being a Protestant, were now as little satisfied with the Deputy's Religion, and as violently opposed all his Desires, and violated their own Promises, and quickly made it evident, that his Affection and Loyalty to the King was that which they disliked, and a Crime that could not be weighed down by the undoubted Sincerity of his Religion. They enter'd into secret Correspondence with the Enemy, and Conspiracies between themselves; and though there were some Persons of Honour and Quality with the Deputy, who were very faithful to him and to the King, yet there were so many about him of another Alay, that all his Councils, Resolutions, and Designs were soon enough discovered to the Enemy to be prevented; and though some of the Letters were intercepted, and the Persons discover'd who gave the Intelligence, he had not Power enough to bring them to Justice; but being commonly Friars and Clergymen, the Privilege of the Church was presently insisted upon, and so they were rescued from the secular Prosecution till their Escape was contrived. That perfidious and treacherous Party had so great an Interest in all the Towns, Forts, and Garrisons, which yet pretended to be subject to the Deputy, that all his Orders were still contradicted or neglected; and the Enemy no sooner appear'd before any Place, but some Faction in the Town caused it to be deliver'd up and render'd. Nor could this fatal Sottishness be reform'd even by the Severity and Rigour which the *English* exercised upon them; who, by the wonderful Judgment of God Almighty, always executed those Men who put themselves and the Towns into their Hands, finding them to have had some barbarous Part in the foul Murders which had been committed in the Beginning of the Rebellion, and who had been, by all the Acts of Grace granted by the several Powers, still reserved for Justice: And of this kind there were so many Instances in and about *Limerick* and *Galloway*, that they deserved to be collected and mention'd in a Discourse by itself, to observe and magnify the wonderful Providence of God Almighty, in bringing heinous Crimes to Light and Punishment in this World, by Means unapprehended by the Guilty; inasmuch, as there was scarce a Person of the Clergy or Laity, who had had a single Hand in the contriving and fomenting the first Rebellion, and in the Perpetration of those horrible Murders, who had obtruded all Overtures towards Peace, and caused Peace to be broken as soon as made; who had adhered to the Nuncio, and endeavoured most maliciously to exclude the King and his Royal Posterity from the Dominions of *Ireland*; I say, there was scarce a Man very notorious,



and eminent in Transgressions of this kind, who did not by some Act of Treachery first endeavour to merit from the *English*, and by that or by some other means fell into their Hands, and were by them publickly and reproachfully executed and put to Death.

This being the sad Condition the Lord Deputy was in, and the *Irish* Party having without his Leave, and against his exprefs Command, taken upon them to send Messengers into *Flanders*, to desire the Duke of *Lorraine* to take them into his Protection, offering to deliver several important Places and Sea-Towns into his Possession, and to become his Subjects; upon which Invitation the Duke sent over an Ambassador and a good Sum of Money for their present Relief; the Deputy was in a short time reduced to those Straits, that he durst not remain in any Town, nor even in his own House for three Days together, but was forced for his Security to shift from Place to Place, and sometimes to lodge in the Woods and Fields in cold and wet Nights, by which he contracted those Infirmities and Diseases which shortly after brought him to his Grave; and in the end, he was compelled to accept a Pass from the *English*, who had a Reverence to his Person and unspotted Reputation, to transport himself into *England*, where his Wife and Family were, and where he died before he could procure means to carry himself to the King, which he always intended to do.

When the *English* Commissioners had enlarged themselves with some Commotion in this Narration and Discourse, they again provoked the *Irish* Commissioners to nominate one Person amongst themselves, or those for whom they appeared, who they believed could in Justice demand his Majesty's Favour; and if they could not make it evidently appear, that he had forfeited all his Title to Pardon after the Treaties, and that he had again been as faulty to the King as before, they would be very willing he should be made the Object of the King's Grace and Bounty, and be restored to his Estate. And then applying themselves to his Majesty, with great Duty and Submission, they concluded, that if any Persons had, by their subsequent or secret Services, or by their Attendance upon his Majesty, rendered themselves grateful to him, and worthy of his Royal Favour, they were very willing that his Majesty should restore all, or any of them to their Honours and Estates, in such manner as his Majesty in his Wisdom should think fit, and against all Impediments whatsoever. And hereupon several Acts of Parliament were passed, for the Indemnity and the restoring several Persons of Honour and Interest to their Estates; who either in Justice could require the same, as having been always faithful to the Crown, and suffered with it and for it; or who had so manifested their Affection and Duty for his Majesty, that he thought fit in that Consideration to wipe out the Memory of whatsoever had been formerly done amiss: And by this means many were in a short time put into a full Possession of their Estates, to which they could make a good Pretence at the Time when the Rebellion begun.

The Consideration and Debate about the Settlement of *Ireland*, upon the Bill proposed, took up very many Days, his Majesty being always present, and in which there arose every Day new Difficulties. It appeared plainly enough, that

the Guilt was so general, that if the Letter of the Act of Parliament of the Seventeenth Year of the late King were strictly pursued, almost an Extirpation of the whole Nation would follow, and which at best would be very miserable. Then the Transplantation into *Conought* had been acted, and finished so many Years before (which was very prudently done in Point of Government, in respect of the unsteady Humour of that People, and their natural Inclination to rebel, if the same had been executed by any Rules of Justice) and the Soldiers and Adventurers had been likewise so many Years in the Possession of their Lots, and had laid out so much Money in building and planting, that if his Majesty had reviewed all that had been done, and taken those Advantages upon former Miscarriages and Misapplications as in Law he might have done, the whole Foundations upon which all the Hopes rested of preserving that Kingdom within their Obedience to the Crown of *England* must have been shaken, and even dissolved. And then the Memory of the Beginning of the Rebellion in *Ireland* (how many other Rebellions soever had followed it, as bad or worse in respect of the Consequences that attended them) was as fresh and as odious to the whole People of *England*, as it had been the first Year; and the whole Nation upon the Matter (though there were many Persons of it of great Honour and Virtue) was fallen into that Contempt, that they seemed indeed in the Eyes of *Christendom* worthy of the miserable Fate they were reduced to: And no doubt it was a Consideration that reasonably made them thought less worthy of extraordinary Favour and Compassion, that when both the other Nations had made many noble Attempts for redeeming their Liberty, and for the Restoration of his Majesty (for *Scotland* itself had done much towards it) and his present Restoration was, by God's Blessing, and only with his Blessing, the sole Effect of the Courage and Affection of his own Subjects; so that *England* and *Scotland* had in a great degree redeemed, and even undone what had before been done amiss; and his Majesty had approved and secured those Affections to them, by those Promises and Concessions which he was in Justice obliged to perform: But the miserable *Irish* alone had no Part in the Benefit his Majesty had received, nor had God suffered them to be the least Instruments in bringing his good Pleasure to pass, or to give any Testimony of their Repentance for the Wickedness they had wrought, or of their Resolutions to be better Subjects for the future; so that they seemed as a People left out and exempted from any Benefit from that blessed Conjunction in his Majesty's Restitution: And this Disadvantage was improved towards them by their frequent Manifestation of an inveterate Animosity against the *English* Nation and *English* Government; which again was recompensed to them by an irreconcilable Jealousy of all the *English* towards them; declaring plainly, that they could be no longer secure of any thing they had, or should have in *Ireland*, than it should evidently appear that it was not in the Power of the *Irish* to take it from them; and to this Conclusion their present Confidence and Impudence contributed very much: And it appeared plainly enough, that they expected the same Concessions (which the Necessity of that Time had made fit to be granted to them) in respect of their

their Religion, and Liberty of Conscience, as they called it, should be now likewise confirmed, without which all other Graces would not be sufficient to contain them within the Limits of Subjection. This State and Condition of Affairs, and the Temper of the People, made it very necessary to the King to be very wary in dispensing his ordinary Favours (which his natural merciful Inclination prompted him to) to the *Irish*, and in the Alterations which Justice obliged him to make in that Kingdom, that the Manner of it should make it appear, that it was the particular Justice in a particular Case, which could not be attended with a Consequence prejudicial to any general Interest.

There appeared in this Debate an Intention in the Soldiers and Adventurers, which was to have great Countenance and Approbation in the Bill now under Examination, to destroy all Intails and Settlements at Law upon Consideration of Marriage, or any other Contracts which had been made before the Rebellion; nor had there been in the whole former Proceedings, in the Time of the Usurpation, any Consideration taken of Mortgages or Debts due by Statute or Reconnaissance, or upon any other Security; so that all such Debts must be either lost to the Proprietors, or remain still with the Interest upon the Land, whosoever had enjoyed the Benefit or the Profit thereof: All which seemed very unreasonable and unjust; and that such Estates should remain forfeited by the Treason of the Father, who had been only Tenant for Life, against all Descents and legal Titles of innocent Children, and of which in all legal Attainders the Crown never had or could receive any Benefit. Yet, how unreasonable soever these Pretences appeared to be, the Rules and Directions for the Remedy thereof were not very easy; the *English* declaring, that if such Titles were preserved and allowed to be good, there would not in that universal Guilt which upon the Matter comprehended and covered the whole *Irish* Nation, there would not be one Estate forfeited for Treason, but Intails and other useful Conveyances would be forged to defend and secure the same; nor would there be Witnesses wanting to justify and prove whatsoever their Evidence could be applied to: And if those Trials were to be by the known Rules and Customs of the Law in Cases of the like Nature, there was too much Reason to suspect and fear that there would be little Justice done, since a Jury of *Irish* would be sure to find against the *English*; and there was as much Reason to apprehend that the *English* would bring in their Verdict against the *Irish*, let the Evidence on either Side be what it would. However, the King was in no degree inclined, upon any Suggestions, to countenance such a barefaced Violation of the Law by any Declaration in the Act; and after many Alterations and Amendments, and there remaining still so many Difficulties and Intricacies, he foresaw that all Matters were not yet so clearly stated, that the Settlement could be made by this Bill; but that such Preparations might be made towards it, and such Examinations taken, and some Particulars settled and adjusted, and what remained stated with more Clearness for his Majesty's Determination, he passed the first Act of Parliament, and committed the Execution thereof to too many Commissioners, nominated to his Majesty by those who

were most conversant in the Affairs of *Ireland*; none, or very few of which were known to his Majesty, or to any of those who had been so many Years from their Country, in their constant Attendance upon his Majesty's Person beyond the Seas. And upon this Conclusion, and this Dispatch, the Commissioners from *Ireland* of all Kinds returned thither, the Earl of *Orrery* being one of the three Justices who were entrusted with the Government.

After a Year spent in the Execution of this Commission, there was very little done towards the settling the Kingdom; but, on the contrary, the Breaches were made wider, and so much Passion and Injustice shewed, that Complaints were brought to his Majesty from all Parts of the Kingdom, and from all Persons in Authority. The Number of the Commissioners were so great, and their Interest so different, that they made no Dispatch; very many of them were in Possession of those Lands which others sued for, and bought the broken Titles and Pretences of others for inconsiderable Sums of Money, which they supported and made good by their own Authority; and those Men, who had their own particular Concernment chiefly to maintain, attended the Service very diligently: The few who were more indifferent, by having no Interest of their own at stake, were weary of their Attendance and Expence (there being no Allowance for their Pains) and offended at the Partiality and Injustice they saw practised, withdrew themselves, and would be no longer present at those Transactions, which they could not regulate or reform: All Interests were equally offended and incensed; and the Soldiers and Adventurers complained no less of the Corruption and Injustice than the *Irish* did; so that the Lords Justices and Council found it necessary to transmit another Bill to his Majesty, which, as I remember, they called an Explanatory Bill of the former; by which they had provided, That no Person who lived in *Ireland*, or had any Pretence to an Estate there, should be employed as a Commissioner: but that his Majesty should be desired to send over a competent Number of well-qualified Persons out of *England* to attend that Service; upon whom a fit Salary should be settled by the Bill, and such Rules set down as might direct and govern the Manner of their Proceedings; an Oath being likewise included in the Bill which the Commissioners were to take for the impartial Administration of Justice. And for the Prosecution of this new transmitted Act, several Persons were sent over to attend, and inform his Majesty and the Council upon any Difficulties or Scruples that might arise upon the several Claims and Pretences which were made.

The second Act took as much Time as the former; all that had been said in the former Debates being again repeated, and almost with the same Passion and Impertinence; the *Irish* making large Observations upon the Proceedings of the late Commissioners, to justify those Fears and Apprehensions they had formerly urged. And there is too much Reason to believe, that their greatest Design now was rather to keep off any Settlement, than that they hoped to procure such a one as they desired; relying more to find their Account from a general Dissatisfaction, and the Distraction and Confusion which was like to attend it, than from any Determination that was like



like to be given in their Favour: Which yet they did not despair of, as well by some Promises their Friends at Court had made to them, upon great Promises made first by them, as well as for the Prejudice they found was generally conceived against some of the Soldiers, and many of the Adventurers, who were like to gain most upon the Division. And though the *Irish* were in general Dread and Detestation for the Reasons aforesaid; yet there were many particular Men, both of the Soldiers and Adventurers, who, in respect of many notorious and opprobrious Actions against the Crown throughout their whole Employment, were as little satisfied with this Revolution as any Men could be, and were so universally odious both in *England* and *Ireland*, that if the King's Justice could have been observed, and their particular Cases severed from the rest, without Violation of the Rule which secured the rest, any thing that could have been done to their Detriment would have been grateful enough. However, after a very tedious Debate, his Majesty being assured by those who were thought to understand *Ireland* very exactly, and, upon the Surveys which had been taken of *Ireland* with great Punctuality, undertook that there was Land enough to satisfy all the Soldiers and Adventurers, and that there would be enough left for the Accommodation of the *Irish* in a liberal Proportion; and having given some Rules likewise and Limitations to the immoderate Pretences and Demands of the Soldiers and Adventurers upon the *Dublin* Ordinance, and imperfect Admeasurements, and some other Irregularities which in the Execution of the former Commission they had indulged to themselves, his Majesty likewise dispatched the second Bill.

Whilst this second Bill was under Deliberation, there fell out some Accidents which produced great Alterations with reference to the Affairs of that Kingdom: The Earl of *Montroth*, who was one of the Justices, was lately dead; and it had been very apparent, that whilst he was alive, the Difference between the three Justices, and their different Humours and Affections, had little advanced the settling the Government; so that they who took the most impartial Survey of all that was done, did conclude that nothing could be so reasonably done towards a Settlement, as the deputing one single Person to exercise that Government: And the Duke of *Albemarle* himself, who had a very considerable Estate in that Kingdom, which made him long for a Settlement, and who had both before the King's Return, and ever since, passionately insisted that the Duke of *Ormond* should not be employed there; who likewise had as great an Aversion from the Thought of it; I say, the General now had so totally changed his Mind, that he told the King, that there was no Way to explicate the Kingdom out of those Intricacies in which it was involved, but by sending over a Lord Lieutenant thither: that he thought it not fit for his Majesty's Service, that himself, who had the Commission of Lord Lieutenant, should be absent from his Majesty's Person; and therefore that he was very ready and desirous to give up his Commission; and that in his Judgment no body would be able to settle and compose the several Factions in that Kingdom but the Duke of *Ormond*, which he thought would be very grateful to all sorts of People; and therefore his positive

Advice was, that his Majesty would as soon as was possible grant his Commission of Lieutenancy to him, and send him over into *Ireland*; and both the King and the General had spoken with the Duke of *Ormond*, and prevailed with him to accept the Charge, before ever I heard of it; all of them believing that the Uncertainty of his being able to do the King Service, in so general a Division and Jealousy of Persons, and Contradiction of Interests, and the great Affection and Friendship I had for the Duke of *Ormond*, would make me dissuade him from exposing himself to so hazardous an Undertaking; which was very true: But his Majesty believing that it was very necessary for his Service, and the Duke having always resigned himself to his Majesty's Disposal, he cheerfully undertook the Employment; and his Majesty named and appointed Sir *Richard Rainsford*, Serjeant at Law, (since made one of the Barons of his Majesty's Exchequer at *Westminster*) Sir *Edward Smith*, one of the Benchers of the *Middle-Temple*, (afterwards made Chief Justice of his Majesty's Court of Common-Pleas in *Ireland*) *Henry Coventry*, one of his Majesty's Bed-chamber, Sir *Winfan Churchill*, Colonel *Edward Cooke*, Sir *Edward Deering*, and Sir *Tho. Beverly*, all Persons of very good Parts and very clear Reputations, to be his Commissioners for the Execution of the Bill of Settlement of *Ireland*: And with these, and all other Persons who attended that Interest, the Duke of *Ormond* entered upon his Journey for that Kingdom about *July* or *August*, in the Year One thousand six hundred sixty four, full four Years after the King's happy Return into *England*. And when Mr. *Coventry* shortly after procured his Majesty's Leave to return to his Attendance upon his Person, Sir *Allen Broderick* was appointed to serve in his Place as a Commissioner.

It was some Months before the Commissioners, after their Arrival in *Ireland*, could settle those Orders and Rules for their proceeding which were necessary before they appointed the People to attend: and it was as necessary that they should, in the Order of their Proceedings, first proceed upon the *Irish*; both because there should be no Settlement of Soldiers or Adventurers in Possession of any Lands, before the Title of the *Irish* was determined; and because there was a Clause in the last Act of Parliament, that all the *Irish* should put in their Claims by such a Day, and be determined before such a Time; which Time might be prolonged for once by the Lord Lieutenant and Council. So that the Delay for so many Months before the Commissioners sat, gave great Argument of Complaint to the *Irish*, tho' it could not possibly be avoided, in regard that the Commissioners themselves had not been nominated by the King above twenty Days before they began their Journey for *Ireland*: so that they could never so much as read over the Acts of Parliament together before they came to *Dublin*; and then they found so many difficult Clauses in both Acts of Parliament, and so contrary to each other, that it was no easy Matter to determine how to govern themselves in Point of Right, and to reduce themselves to any Method in their Proceedings: But after they had adjusted all things as well as they could, they published their Orders in what Method they meant to proceed, and appointed the *Irish* to put in their Claims by such a Time, and to attend the Prosecution of them

them accordingly. And they had no sooner entered upon their Work, but the *English* thought they had begun it soon enough; for they heard every Day many of the *Irish*, who had been known to be the most forward in the first Beginning of the Rebellion, and the most malicious in carrying it on, declared innocent; and Deeds of Settlement and Entails, which had been never heard of before, and which would have been produced (as they reasonably believed) before the former Commissioners if they had had them to produce, now declared good and valid; by which the *Irish* were immediately put into Possession of a very great Quantity of Land taken from the *English*: So that in a short Time the Commissioners had rendered themselves as generally odious as the *Irish*, and were looked upon as Persons corrupted for that Interest, which had every Day Success almost in whatsoever they pretended; and their Determinations happened to have the more of Prejudice upon them, because the Commissioners were always divided in their Judgments; and it is no Wonder that they who seemed most to adhere to the *English* Interest were most esteemed by them. The Parliament in *Ireland* was then sitting, and the House of Commons (consisting of very many Members, who were either Soldiers or Adventurers, or had the like Interest) was very much offended at the Proceedings of the Commissioners, made many Votes against them, and threatened them with their Authority and Jurisdiction; but the Commissioners, who well knew their own Power, and that there was no Appeal against their Judgments, proceeded still in their own Method, and continued to receive the Claims of the *Irish* beyond the Time that the Act of Parliament or the Act of State limited to them, as was generally understood; and during their last eight or ten Days Sitzings upon those Claims, they passed more Judgments and Determinations than in near a Year before, indeed with wonderful Expedition; when the *English*, who were dispossessed by those Judgments, had not their Witnesses ready, presuming that in Point of Time those Causes could not have been heard. By these Sentences and Decrees, many hundred thousand of Acres were adjudged to the *Irish*, which had been looked upon as unquestionably forfeited. This raised so great a Clamour, that the *English* refused to yield Possession upon the Decrees of the Commissioners; who, by an Omission in the Act of Parliament, were not qualified with Power enough to provide for the Execution of their own Sentences: The Courts of Law established in that Kingdom would not, nor indeed could, give any Assistance to the Commissioners; and the Lord Lieutenant and Council, who had, in the Beginning, by their Authority, put many of those into Possession of those Lands which the Commissioners had decreed to them, were now more tender and reserved in that Multitude of Decrees which had lately passed: so that the *Irish* were using their utmost Endeavours by Force to recover the Possession of those Lands which the Commissioners had decreed to them, whilst the *English* were likewise resolved by Force to defend what they had been so long possessed of, notwithstanding the Commissioners Determination; and the Commissioners themselves were so far troubled and dissatisfied with these Proceedings, and with some intricate Clauses in the

Act of Parliament concerning the future Prosecution of that Affair, that though they had not yet made any Entrance upon the Decision of the Claims of the *English*, or of the *Irish* Protestants, they declared that they would proceed no farther upon the Execution of their Commission, until they could receive his Majesty's Pleasure; and for the better doing thereof, they desired his Majesty's Leave that they might attend his Royal Person; and there being at the same Time several Complaints made against them to his Majesty, and Appeals made to him from their Decrees, his Majesty gave the Commissioners Leave to return; and at the same Time all the other Interests sent their Deputies to solicit their Right: In the Prosecution whereof, after much Time spent, the King likewise thought fit to receive the Advice and Assistance of his Lieutenant; and so the Duke of *Ormond* likewise attended his Majesty, and the Settlement of *Ireland* was the third Time brought before his Majesty and his Council; there being then likewise transmitted a third Bill, as additional and supplemental to the other two, and to reverse many of the Decrees made by the Commissioners, they bearing the Reproach of all that had been done, or had succeeded amiss, and of all Persons who were grieved of any Kind soever.

The King was very tender of the Reputation of his Commissioners, who had been always esteemed Men of great Probity, and unquestionable Reputation; and though he could not refuse to receive Complaints, yet he gave those who complained no farther Countenance, than to give the others Opportunity to vindicate themselves; nor did there appear the least Evidence to question the Sincerity of their Proceedings, or to make them liable to any reasonable Suspicion of Corruption; and the Complaints were still prosecuted by those who had That taken from them which they desired to have kept for themselves. The Truth is, there is Reason enough to believe, that upon the first Arrival of the Commissioners in *Ireland*, and some Conversation they had, and the Observation they made of the great Bitterness and Animosity from the *English*, both Soldiers and Adventurers, towards the whole *Irish* Nation, of what Kind soever; the scandalous Proceeding of the late Commissioners upon the first Act, where they had not been guided by any Rules of Justice, but rejecting all Evidence which might operate to the taking any thing from them which they resolved to keep, the Judges themselves being both Parties and Witnesses in all the Causes brought before them; together with the very ill Reputation very many of the Soldiers and Adventurers had, for extraordinary Malice to the Crown, and to the Royal Family; and the notable Barbarity they had exercised towards the *Irish*, who, without Doubt, for many Years had undergone the most cruel Oppressions of all Kinds that can be imagined, many thousands of them having been forced, without being covered under any House, to perish in the open Fields for Hunger; the infamous Purchases which had been made by many Persons, who had compelled the *Irish* to sell their Remainders and lawful Pretences, for very inconsiderable Sums of Money: I say, these and many other Particulars of this Kind, together with some Attempts that had been made upon their first Arrival, to corrupt them, against all Pretences which should be made



by the *Irish*, might probably dispose the Commissioners themselves to such a Prejudice against many of the *English*, and to such a Compassion towards the *Irish*, that they might be too much inclined to favour their Pretences and Claims; and to believe that the Peace of the Kingdom and his Majesty's Government might be better provided for, by their being settled in the Lands of which they had been formerly possessed, than by supporting the ill-gotten Titles of those who had manifested all imaginable Infidelity and Malice against his Majesty, whilst they had any Power to oppose him; and had not given any Testimony of their Conversion, or of their Resolution to yield him for the future a perfect and intire Obedience, when they could oppose him no longer; as if they desired only to retain those Lands they had gotten by Rebellion, together with the Principles upon which they had received them, until they should have an Opportunity to justify both by some new Power or Concurrence amongst themselves. Whencesoever it proceeded, it was plain enough the *Irish* had received more Favour than was expected or imagined; and in the very Entrance into the Work, to avoid the Partiality which was too apparent in the *English* towards each other, and their Animosity against the *Irish* as evident, very strict Rules had been set down by the Commissioners, what Kind of Evidence they would admit to be good, and receive accordingly; and it was provided, that the Evidence of no Soldier, or Adventurer, should be received in any Case, to which himself was never so much a Stranger; as, if his own Lot had fallen in *Munster*, and that he had no Pretence to any thing out of that Province, his Evidence should not be received as to any thing that he had seen done in *Lempster*, or *Conought*, or *Ulster*, wherein he was not at all concerned; which was thought to be a very unjust Rule, after so many Years expired, and so many Persons dead, who had likewise been present at those Actions: And by this Means many Persons were declared not to have been in Rebellion, when there was full Evidence that they had been present in such and such a Battle, and in such and such a Siege, if the Witnesses might have been received, who were then present at those Actions, and ready to give Testimony of it, and of such Circumstances as could not be feigned, if their Evidence might have been received. That which raised the greatest Umbrage against the Commissioners was, that a great Number of the most infamous Persons of the *Irish* Nation, who were looked upon by those of their own Country with the greatest Detestation, as Men who had been the most violent Fomenters and Prosecutors of the Rebellion, and the greatest Opposers of all moderate Counsels, and of all Expedients which might have contributed towards a Peace in the late King's Time, whereby the Nation might have been redeemed, and who had not had the Confidence so much as to offer any Claim before the late Commissioners, were now adjudged and declared Innocents, and so restored to their Estates; and that many others, who had in Truth never been in Rebellion, but notoriously served the King against the Rebels, both in *England* and in *Ireland*, and had never been put out of the Possession of their Estates, were now upon some slight Evidence, by the Interception of Letters, or Confession of Messen-

gers that they had some Correspondence with the Rebels, though it was evident, that even that Correspondence was perfunctory, and only to secure them that they might pursue his Majesty's Service, were condemned, and had their Estates taken away from them. Many who had formerly made their Claims, without insisting upon any Deeds of Settlement, or other Conveyances in Law, now produced formal Settlements, in Consideration of Marriage, or other like good Considerations in Law, made before the Beginning of the Rebellion; which being now proved by Witnesses enough, Decrees were every Day obtained for the Restitution of great Quantities of Land upon those Deeds and Conveyances: though the Forgeries of those Deeds, and Perjuries of the Witnesses, were very notorious, and some Instances were given of the Manifestation and direct Proof made of the Forgery of Deeds; upon which Decrees had been made, to the Satisfaction of the Commissioners themselves, within a very short Time after the pronouncing such Decrees, and yet no Reparation was given, but the said Decrees proceeded, and were executed with all Rigour. The Commissioners answered, That they had made no Decrees but according to their Consciences, and such as they were obliged to make by the Course and Rules of Justice; that they did not doubt, but in truth did believe, that there had been evil Practices used, both in forging of Deeds and corrupting of Witnesses, and that the same was equally practised by the *English* as well as the *Irish*; and therefore that they had been obliged to make that Order which had been so much excepted against, not to admit the Testimony of any *English* Adventurer or Soldier in the Case of another Adventurer or Soldier: for that it was very notorious they looked upon the Whole as one joint Interest, and so gratified each other in their Testimonies; and of this they gave many sad Instances, by which it was too evident, that the Perjuries were mutual, and too much entertained by the one and the other Side: That they had used the best Providence and Vigilance they could, by the careful Examination of the Witnesses, which were produced apart, and never in the Presence of each other, and by asking them all such material Questions as occurred to their Understandings, and which they could not expect to be asked, to discover the Truth, and to prevent and manifest all Perjury: That they had likewise used their utmost Diligence and Care to prevent their being imposed upon with false and forged Deeds and Conveyances, by taking a precise and strict View themselves of all Deeds produced; and interrogated the Witnesses with all the Cunning they could, upon the Matter and Consideration upon which such Deeds had been entered into, and upon the Manner and Circumstances in the Execution thereof; which was all the Providence they could use; and though they met with many Reasons oftentimes to doubt the Integrity of the Proceedings, and in their own private Consciences to apprehend there might be great Corruption, yet that they were obliged judicially to determine according to the Testimony of those Witnesses, and the Evidence of those Deeds in Law, against which no Proofs were made: That they had constantly heard all that the adverse Party thought fit to object, both against the Credit of any Witnesses, and the

Truth

Truth of any Conveyances which were produced; upon which they had rejected many Witnesses, and disallowed some Conveyances: but when the Objections were only founded upon Presumptions and Probabilities, as most usually they were, they could not weigh down the full and categorical Evidence that was given: That if they had yielded to the Importunities of the Persons concerned, who oftentimes pressed to have further Time given them to prove such a Perjury, or to disprove such a Conveyance, it must have made their Work endless, and stopped all Manner of Proceedings, for which it appeared that they were streightened too much in Time, and that in truth would have but opened the Doors wider for Perjury and other Corruptions; since it was very plain to them, that either Side could bring as many Witnesses as they pleased, to prove what they pleased, and that they would bring as many as they believed necessary for the Work in hand: And therefore that the Commissioners having before prescribed a Method and Rules to themselves for their Proceeding, and that no Man could have a Cause in which he was concerned brought to hearing without his knowing when it was to be so heard, and so it was to be presumed that he was well provided to support his own Title; and therefore that they had thought fit, upon mature Deliberation amongst themselves, to adhere to the Order they had prescribed to themselves, and others, and to conclude that they could not be able to prove that at another Day, which they were not to prove then: For the Discovery of any Forgery after the Decrees had been passed, and upon which they had given no Reparation, they confessed some few such Discoveries had been made to them, by which the Forgery appeared very clearly; but as they had not Power by the Act of Parliament to punish either Forgery or Perjury, but must leave the Examination and Punishment thereof to the Law, and to the Judges of the Law; so that they had only Authority to make Decrees upon such Grounds as satisfied them in their Consciences, but had not any Authority to reverse those Decrees after they were once made and published, upon any Evidence whatsoever. They concluded with their humble Desire to the King, that the strictest Examination might be made of their Corruptions, in which they were sure to be found very innocent, against all the Malice that was discovered against them: That they had proceeded in all Things according to the Integrity of their own Hearts, and the best of their Understandings; and if they had, through the Defect of that, erred in any Part of their Determinations, they hoped their Want of Wisdom should not be imputed to them as a Crime.

Many who had a very good Opinion of the Persons and Abilities of the Commissioners, were not yet satisfied with their Defence; nor did they believe that they were so strictly bound to judge upon the Deposition of suspected Witnesses: but that they were therefore trusted with an arbitrary Power, because it was foreseen that Juries would not have been intire; so that they were, upon weighing all Circumstances, to declare what in their Consciences they believed to be true and just: That if they had bound themselves up by too strict and unreasonable Rules, that they should rather have in Time reformed those Rules,

than thought to support what was done amiss; by the Observation of what they had prescribed to themselves; and it was believed that the intire Exclusion of the *English* from the proving of what could not in Nature be otherwise proved, was not just or reasonable: That their Want of Power to reverse or alter their own Decrees upon any emergent Reasons which could afterwards occur, was a just Ground for their serious Deliberation in and before they passed any such Decrees; and their Excuse for not granting longer Time, when it was pressed for, upon Reasons which were very visible, was not to be justified, it not being possible for any Man to defend himself against the Claims of the *Irish*, without knowing what Deeds or Witnesses they would produce for making good their Suggestions; and therefore it was as impossible for them to have all their Evidence upon the Place: Besides that, it was very evident, that in their last ten Days of their Sitting (which were likewise thought to be when their Power as to those Particulars was determined, and in which they had made more Decrees than in all the Time before) they had made so many in a Day (contrary to their former Rule and Method) that Men were plainly surprised, and could not produce those Proofs which in a very short Time they might have been supplied with; and the refusing to allow them that Time, was upon the Matter to determine their Interest, and take away their Estates, without being once heard, and upon the bare Allegations of their Adversaries; and in those latter Decrees many Instances were given of that Nature, wherein the Evidence appeared to be very full, if Time had been given to produce it.

There was one very notable Case decreed by the Commissioners extremely complained of, and cried out upon by all Parties, as well *Irish* as *English*; and for which the Commissioners themselves made no other Excuse or Defence but the Receipt of a Letter from the King; which was not thought a good Excuse for sworn Judges, as the Commissioners were: It was the Case of the Marquis of *Antrim*; which Case having been so much upon the Stage, and so much enlarged upon, to the Reproach of the King, and even to the traducing of the Memory of his blessed Father; and some Men, who most contributed to what was unwarily done in that Affair, having done all they could to wound my Reputation, and to get it to be believed that I misled his Majesty, by my Advice, to oblige that Marquis; I think it a Debt due to Truth, and to the Honour of both their Majesties, as well as for my own Vindication, to set down a very particular Narration of that whole Affair; by which it will appear how far the King was from so much as wishing that any thing should be done for the Benefit of the Marquis, which should be contrary to the Rules of Justice. Whilst his Majesty was in foreign Parts, he received frequent Advertisements from *England* and from *Ireland*, that the Marquis of *Antrim* behaved himself very undutifully to him; that he had made himself very grateful to the Rebels, by calumniating the late King; and that he had given it under his Hand to *Ireton*, or some other principal Person employed under *Cromwell*, that his late Majesty had sent him into *Ireland* to join with the Rebels, and that he was not offended with the *Irish* for entering into that Rebellion. Which was a Calumny



lummy so false and so odious; and reflected so much upon the Honour of his Majesty, that the King was long resolved, as soon as God should put it into his Power, to cause the strictest Examination to be taken concerning it: The Report having gained much Credit with his Majesty, by the Notoriety that the Marquis had procured great Recommendations from those who governed in *Ireland* to those who governed in *England*; and that upon the Presumption of that he had come into *England*, and as far as *St. Albans* towards *London*; from whence he was forced suddenly to return into *Ireland* by the Activity of his many Creditors, who, upon the News of his coming, had provided for his Reception, and would unavoidably have cast him into Prison; and no Recommendation could have inclined those who were in Authority to do any thing extraordinary for the Protection of a Person, who from the Beginning of the *Irish* Rebellion lay under so ill a Character with them, and had so ill a Name throughout the Kingdom.

The King had been very few Days in *London*, after his Arrival from the Parts beyond the Seas, when he was informed that the Marquis of *Antrim* was upon his Way from *Ireland* towards the Court; and the Commissioners from *Ireland*, who have been mentioned before, were the first (if I remember well) who gave his Majesty that Information; and at the same Time told him all that his Majesty had heard before concerning the Marquis, and of the bold Calumnies with which he had traduced his Royal Father, with many other Particulars; all which they affirmed would be proved by unquestionable Evidence, and by Letters and Certificates under his own Hand. Upon this full Information (of the Truth whereof his Majesty entertained no Doubt) as soon as the Marquis came to Town, he was, by the King's special Order, committed to the *Tower*; nor could any Petition from him, or Intreaty of his Friends (of which he had some very powerful) prevail with his Majesty to admit him into his Presence; but by the first Opportunity he was sent Prisoner to *Dublin*, where he was committed to the Castle, his Majesty having given Direction that he should be proceeded against with all Strictness according to Law; and to that Purpose the Lords Justices were required to give all Orders and Directions necessary. The Marquis still professed his Innocence, and used all the Means he could to procure that he might be speedily brought to his Trial, which the King likewise expected; but after a Year's Detention in Prison, and nothing brought against him, he was set at Liberty, and had a Pass given him by the Council there to come into *England*. He then applied himself to his Majesty, demanding nothing of Favour; but expected Justice, and that after so many Years being deprived of his Estate he might at last be restored to it, if nothing could be objected against him wherein he had diserved his Majesty. He was a Gentleman that from his Youth had been bred up in the Court of *England*; and having married the Dutchess of *Buckingham*, he had been very well received by both their Majesties, and was frequently in their Presence; he had spent a very vast Estate in the Court, without ever having received the least Benefit or Advantage from it; he had retired into *Ireland*, and lived upon his own Estate in that Country some Years before

the Rebellion broke out; in the Beginning whereof he underwent some Suspicion, having had some Correspondence with them, and possibly made some Undertakings to them; but he went speedily to *Dublin*, and from thence transported himself to *Oxford* to his Majesty, to whom he gave so good an Account of all that had passed, that the King had no Doubt of his Affection to his Service, though he had little Confidence in his Judgment and Understanding, which were never very remarkable: Besides that, it was well known that he had a very unreasonable Envy towards the Marquis of *Ormond*, and would fain have it believed that his Interest in *Ireland* was so great, that he could easily reclaim that whole Nation to his Majesty's Obedience; but that Vanity and Presumption never gained the least Credit with his Majesty.

Upon the Scots entering into *England* with their Army upon the Obligation of their Covenant, and all his Majesty's Endeavours to prevent it being disappointed, the Marquis of *Montrose* had proposed to his Majesty to make a Journey privately into *Scotland*, and to get into the *Higblands*; where, with his Majesty's Authority, he hoped he should be able to draw together such a Body of Men as might give his Countrymen Cause to call for their own Army out of *England* to secure themselves; and with this Overture, or upon the Debate thereof, that the Earl of *Antrim* (for he was then no more) might be likewise sent into *Ulster*, where his Interest lay, from whence he would be able to transport a Body of Men into the *Higblands*, where he had likewise the Clan of the *Macdonalds*, who acknowledged him to be their Chief, and would be consequently at his Devotion; by which means the Marquis of *Montrose* would be enabled the more powerfully to proceed in his Undertaking. The Earl of *Antrim* entered upon his Undertaking with great Alacrity, and undertook to the King to perform great Matters in *Scotland*, to which his own Interest and Animosity enough disposed him, having an old and sharp Controversy and Contestation with the Earl of *Argyll*, who had dispossessed him of a large Territory there. All Things being adjusted for this Undertaking, and his Majesty being well pleased with the Cheerfulness of the Earl's Undertaking, he created him at that Time a Marquis, gave him Letters to the Marquis of *Ormond*, his Lieutenant there, as well to satisfy him of the good Opinion he had of the Marquis of *Antrim*, and of the Trust he had reposed in him, as to wish him to give him all the Assistance he could with Convenience for the carrying on that Expedition for *Scotland*; and for the better preventing any Inconvenience that might fall out by the Rashness and Inadvertency of the Marquis towards the Marquis of *Ormond*, his Majesty sent *Daniel O Neil*, one of his Bed-chamber, into *Ireland* with him, who had great Power over him, and very much Credit with the Marquis of *Ormond*, and was a Man of that Address and Dexterity, that no Man could so well prevent the Inconveniences and Prejudice which his natural Indiscretion and Levity might tempt the Marquis to, or more dispose and incline the Lord Lieutenant to take little Notice of those Vanities and Indiscretions; and the King did likewise, having no Desire that the Marquis should stay long in *Dublin*, and he promising at his

his going from *Oxford*, that he would in Person go into *Scotland* with his Forces, give him Leave to hold that Correspondence with the *Irish* Rebels (who had the Command of the most *Northern* Parts, and without whose Connivance at least he would very hardly be able to make his Levies, and transport his Men) as was necessary to that End: Within the Limits of which, it is probable enough that he did not contain himself, and might say many Things which he had not the least Authority to warrant him in.

Upon his coming to *Dublin*, the Lord Lieutenant gave him all the Countenance he could wish, and assisted him in all the Ways he could to prosecute his Design; but the Men were to be raised in or near the Rebels Quarters: And it cannot be denied but that the Levies he made, and sent over into *Scotland* under the Command of *Kalketo*, was the Foundation of all those wonderful Acts which were afterwards perform'd by the Marquis of *Montrofs*; they were Fifteen Hundred very good Men, with very good Officers, all so hardy, that neither the ill Fare, nor the ill Lodging in the *Higblands*, gave them any Discouragement, and gave the first Reputation to the Marquis of *Montrofs* of being at the Head of an Army; under which he drew together such of the *Higblanders*, and others of his Friends who were willing to repair to him; but upon any Military Action and Defeat given by them to the Enemy, which happen'd as often as they encounter'd the *Scots*, they went always home with their Booty to their Houses, and the *Irish* only stay'd together with their General. And from this Beginning the Marquis of *Montrofs* grew to that Power, that after many Battles won by him with notable Slaughters of the Enemy, in one of which he defeated the Marquis of *Argyle*, with his Army of above treble the Number of what *Montrofs* had, and in which the Marquis of *Argyle* was forced to make his Escape, by putting himself almost single into a Boat, and so putting himself off into the Sea, having left, besides others, many of his own Name and Family dead upon the Ground; after which the Marquis of *Montrofs* marched victoriously with his Army, till he made himself Master of *Edenborough*, and redeem'd out of the Prison there the Earl of *Crawford*, Lord *Ogilby*, and many others of his Friends, who had been taken and sent thither, with the Resolution that they should all lose their Heads; and the Marquis of *Montrofs* himself did always acknowledge, that the Rise of his good Success was due and to be imputed to that Body of *Irish* which had in the Beginning been sent over by the Marquis of *Antrim*; to whom the King had acknowledged the Service by several Letters all in his own Hand, in which were very gracious Expressions of the Sense his Majesty had of his great Services, and his Resolution to reward him. It is true, the Marquis of *Antrim* himself had not gone over with his Men, as he promised to do, but stay'd behind in *Ireland*, under Pretence of raising a greater Body of Men, with which he would venture his own Person; but either out of Jealousy or Displeasure against the Marquis of *Montrofs*, or having, in truth, no Mind to that Service, he never pursued the one nor the other, but remain'd not only in the Enemies Quarters, but in their Councils, taking all Occasions to cross whatsoever the Lord Lieutenant most desired; by which he gave so great Advantages

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against himself, and might, in Strictness of Law, have been as severely punish'd by the King as the worst of the Rebels. At last, after he had been taken Prisoner by the *English* or *Scotch*, and made his Escape out of their Hands, he transported himself into *Flanders*, and from thence came into the *West* into the Harbour of *Falmouth*, when the Prince (his Majesty that now is) was in *Cornwall*; to whom he immediately made Tender of his Service with two good Frigates which he had, and in which were likewise a Quantity of Arms, and some Ammunition, which he had procured in *Flanders*, for the Supply of *Ireland*. Most of the Arms and Ammunition were employ'd, with his Consent, for supplying of the Troops and Garrisons in *Cornwall*; and his Majesty made use of one of the Frigates to transport his Person to *Scilly*, and from thence to *Jersey*; without which Convenience, the Prince had been expos'd to very great Difficulties. And after all which, *Dublin* being given up to the Parliament, and the King's Authority withdrawn from that Kingdom, he again transported himself into *Ireland*, and joined with the *Irish*, and was by them sent into *France*, to desire the Queen-Mother and the Prince to send the Marquis of *Ormond* to exercise his Majesty's Government in that Kingdom; which was done accordingly, in the Manner as is mention'd before.

The Marquis of *Antrim* alledged all these Particulars, and produced many original Letters from the late King, the Queen-Mother, and the Prince, in all which his Services had been acknowledged, and many Promises made to him; and concluded with a full Protestation, that he desired no Pardon for any thing he had ever done against the King; but if that there was the least Proof that he had fail'd in his Fidelity to him, or had not, according to the best of his Understanding, advanced his Service, he look'd for no Favour: But if his being in the *Irish* Quarters, and consulting with them, without which he could not have made his Levies for *Scotland*, and his joining with them afterwards, when his Majesty's Authority was withdrawn from thence, do, by the strict Letter of the Law, expose him to Ruin without his Majesty's Grace and Favour, he did hope his Majesty would redeem him from that Misery, and that the Forfeiture of his Estate should not be taken, as if he were a Traitor and a Rebel to the King: And it appeared, that if he were restored to all he could pretend, his Debts were so great, and his Creditors had that legal Incumbrance upon his Fortune, that his Condition, at best, would not be liable to much Envy. Though the King had never been taken Notice of to have any great Inclinations to the Marquis, who was very little known to him; yet this Representation, and clear View of what he had done, and what he had suffered, rais'd great Compassion towards him in his Majesty's Royal Breast; and he thought it would, in some degree, reflect upon his own Honour and Justice, and upon the Memory of his blessed Father, if in a Time when he pass'd by so many heinous Transgressions, he should leave the Marquis to the Fury of his Enemies, for no other Crime upon the Matter, than for not having that Prudence and Justice in his Endeavours to serve the King, as he ought to have had; and the Rigour he had exercised towards him upon his first Arrival, in

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sending him to be tried in *Ireland* by those who enough wished his Destruction, and that they had not been able to make the least Proof against him, improved his Majesty's good Disposition towards him: Yet he refused positively to write a Letter to the Commissioners on his Behalf, which the Marquis most importunately desired, as the only Thing that could do him good; but his Majesty directed a Letter to be prepared to the Lord Lieutenant, in which all his Allegations and Suggestions should be set down, and the Truth thereof examined by the Lord Lieutenant; and that if he should be found to have committed no greater Faults against his Majesty than those which he confessed, that then the Letter should be sent to the Commissioners, that they might see both their Majesty's Testimonies in such Particulars as were known to themselves. And this Letter was very warily drawn, and being approved by his Majesty, was sent accordingly to the Lord Lieutenant; and shortly after was, contrary to his Majesty's Resolution, and contrary to my Advice, and without my Knowledge and Privity, likewise sent to the Commissioners; who had thereupon made such a Decree as is before mention'd, and declared that they had made it only upon that Ground: Which gave his Majesty some Trouble, and obliged him to insert a Clause in the next Bill concerning that Affair. And this was the whole Proceeding that related to the Marquis of *Antrim*, in which I had no Temptation of any Kind to incline me; and I do yet want Understanding to comprehend how there was more Favour shewed towards him by his Majesty, than he might in truth very reasonably pretend to, what Noise soever hath been raised, and what Glosses soever have been made upon that whole Transaction.

When his Majesty enter'd upon the Debate of this Third Bill, which was transmitted to him for a Supplement and Addition to the former Two, he quickly found the Settlement propos'd, and which was the End of the Three Bills, was now grown more difficult than ever: All the Measures which had formerly been taken, from the great Proportion of Land which would remain to be dispos'd of, were no more to be relied upon, but appear'd to have been a wrong Foundation from the Beginning; which was now made more desperate, by the vast Proportions which had been assign'd to the *Irish* by the Commissioners Decrees; and somewhat had intervened by some Acts of Bounty from his Majesty, which had not been carefully enough watched and represented to him. The King had, upon passing the former Bills, and upon discerning how much the *Irish* were like to suffer, resolv'd to retain all that should by Forfeiture, or otherwise, come to his Majesty, in his own Power, to the End, that when the Settlement should be made, he might be able to gratify those of the *Irish* Nation, who had had any thing of Merit towards him, or been least faulty; but he had unawares swerved from that Rule, and had made several Grants, out of his Royal Bounty, to many of his Servants, who had been encouraged by their Friends in *Ireland* to make those Suits, and had procured Certificates from thence; which being produced to his Majesty, had dispos'd him to those Concessions, which otherwise he would not so easily have pass'd: There was besides, in all such Grants, a new Clause introduced, of a very new Nature;

for they being grounded always upon Letters out of *England*, and pass'd under the Great Seal of *Ireland*, the Letters were form'd there, and transmitted hither only for his Majesty's Sign Manual; so that neither his Majesty's learned Council at Law, nor any other his Ministers (the Secretaries only excepted) had any Notice of such Grants. The Clause was, That if any of those Lands so granted by his Majesty, should be otherwise decreed, his Majesty's Grantee should be reprimed with other Lands; so that in many Cases the greatest Inducement to his Majesty's Bounty being the Uncertainty of his own Right, which the Person to whom it was granted was obliged to vindicate at his own Charge, his Majesty was now bound to make it good if his Grant was not valid; and so that which was but a contingent Bounty, was turn'd into a real and substantial Benefit, as a Debt from his Majesty: Which created another Difficulty in the Settlement; which was yet the more hard, because there were many Claims of the *Irish* themselves yet unheard, all the false Admeasurements to be examined, and many other Uncertainties to be determined by the Commissioners, which left those who were in Possession, as well as those who were not, in the highest Insecurity and Apprehension.

This Intricacy, and even Despair, which possess'd all kind of People, of any Settlement, made all of them willing to contribute to any that could be propos'd. They found his Majesty very unwilling to consent to the Repeal of the Decrees made by the Commissioners; which must have taken away the Confidence and Assurance of whatsoever should be done hereafter, by making Men see that what was settled by one Act of Parliament might be unsettled by another; so that there was no Hope by such an Expedient to increase the Number of Acres, which being left might in any Degree comply with the several Pretences: The *Irish* found that they might only be able to obstruct any Settlement, but should never be able to get such a one as would turn to their own Satisfaction: The Soldiers and Adventurers agreed less amongst themselves; and the Clamour was as great against those, who by false Admeasurements had got more than they should have, as from those, who had received less than their Due; and they who least feared any new Examination could not yet have any secure Title, before all the rest were settled. In a Word, all Men found that any Settlement would be better than none; and that more Profit would arise from a smaller Proportion of Land, quietly possess'd, and husbanded accordingly, than of a much greater Proportion under a doubtful Title, and an Uncertainty which must dishearten any Industry and Improvement. Upon these Considerations and Motives they met amongst themselves, and debated together by what Expedient they might draw Light out of this Darkness: There appear'd only one Way which administer'd any reasonable Hope, which was, by increasing the Stock for Reprisals to such a Degree, that all Mens Pretences might, in some Measure, be provided for; and there was no other Way to arrive to this, but by every Man's parting with somewhat which he thought his own: And to this they had one Encouragement, which was of the highest Importance to them, which was, that this Way an End would be put to the unlimited Jurisdiction of the Commissioners, (which was very

very terrible to them) who from henceforth would have little other Power than to execute what should be here agreed upon. In Conclusion, they brought a Proposition to the King, raised and digested between themselves, that all Persons, who were to receive any Benefit by this Act, should abate and give a fourth Part of what he had towards the Stock for Reprisals; all which the Commissioners should distribute amongst those *Irish* who should appear most fit for his Majesty's Bounty; and this Agreement was so unanimous, that though it met with some obstinate Opposition after it was brought before his Majesty, yet the Number of the Opposers was so small in respect of the others who agreed to it, that they grew weary and ashamed of farther Contention; and thereupon that Third Act of Settlement, as supplemental to the other Two, was consented to by the King: who, to publish to the World that nothing stuck with him which seemed to reflect upon the Commissioners to their Prejudice, resolved to make no Change; and so though Mr. Baron *Rainsford*, and Sir *Thomas Beverly*, made their humble Suit to his Majesty, that they might not return again into *Ireland*, his Majesty did not grant their Request, and continued Sir *Edward Smith*, who was now Chief Justice of the *Common Pleas* in that Kingdom, Sir *Edward Deering*, Sir *Allen Broderick*, (who had succeeded Mr. *Coven-try* in that Office, when he returned to Court) Sir *Winston Churchill*, and Colonel *Cooke*, his Commissioners, to execute what was done by this new Act, and so to perfect the Settlement. These were all the Transactions with reference to *Ireland*, which I was privy to, and in which I assisted, as all the rest of my Lords of the Council who were present did; and did very little more in it than any of the rest did, except when any Difficulties occurred in their private Meetings and Debates, they sometimes resorted to me for Advice; which I was very ready to give them to the best of my Understanding, being very ready and willing to take any Pains which might make that very difficult Work more easy to be compassed; but as I never deserved any Reward for so doing, so I never received the Benefit of one Shilling in Money, or Monies worth, for any thing that was done in that Affair; and was so far from entertaining any Overture made to that Purpose, that it is notoriously known to some Persons of Honour, who, I presume, will be ready to testify the same, that when, upon his Majesty's first Return into *England*, some Propositions were made to me, of receiving the Grant of some forfeited Lands, and for the buying of other Lands there, upon the Desire of the Owners thereof, and at so low a Price, that the very Profit of the Land would in a short Time have paid for the Purchase; and other Overtures of immediate Benefit in Money, which others did, and lawfully might accept; I rejected all Propositions of that kind, or relating to it, and declared publickly and privately, that I would neither have Lands in *Ireland*, or the least Benefit from thence, till all Differences and Pretences there were so fully agreed and settled, that there could be no more Appeal to the King, or repairing to his Majesty and Council for Justice; in which I told them, I should never be thought so competent an Adviser, after I had any Title of my own in that Kingdom, to byas my Inclinations;

and I never took a firmer Resolution in any Particular in my Life, than to adhere to that Conclusion: Yet, because it is notorious enough; that I did receive afterwards some Money out of *Ireland*, and have a very lawful Title to receive more, it is necessary for my own entire Vindication, to set down particularly how that came to pass, and to mention all the Circumstances which preceded, accompanied, or attended that Affair.

Amongst the Bills which were first transmitted from *Ireland* after his Majesty's happy Return, there was an Imposition of a certain Sum of Money upon some specified Lands, in the several Provinces, (the Nature whereof I cannot charge my Memory with) which were to be paid to his Majesty within a limited Time, and to be disposed of by his Majesty to such Persons who had served him faithfully, and suffered in so doing, or Words to that Effect; for I may with a very good Conscience say, that I never to this Minute read the Act of Parliament, and am almost confident that I never heard of it at the Time when it passed, being often absent from the Council, by reason of the Gout, or other Accidents, when such Matters were transacted. But very near two Years after his Majesty's Return, I received a Letter from the Earl of *Orrery*, that there would be in his Hands, and the Earl of *Anglesey's* and Lord *Mazzarin's*, (who it seems were appointed Treasurers to receive the Money raised by that Act of Parliament) a good Sum of Money for me; which he gave me Notice of, to the End that I might give Direction for the Disposal thereof, whether I would have it returned into *England* to me in Money, or laid out in Land in *Ireland*; and he wished that I would speedily send my Direction, because he was confident that the Money would be paid in at least by the Time that my Letter could arrive there. No Man can be more surprized with any thing, than I was at the Receipt of this Letter; believing that there was some Mistake in it, and that my Name might have been used in Trust by somebody who had given no Notice of it; and without returning any Answer to the Earl of *Orrery*, I writ by that Post to the Lord Lieutenant, (for it was after his first going into *Ireland*) to inform him what my Lord of *Orrery* had writ to me, and to desire him to inform me by his own Inquiry what the Meaning of it might be. Before I had an Answer from the Lord Lieutenant, or indeed before my Letter could come to his Hands, I received a second Letter from the Earl of *Orrery*; in which he inform'd me, that there was now paid in, to my Use, the Sum of Twelve Thousand Six Hundred Pounds, or thereabouts, and that there would be the like Sum again received at the End of Six Months; sending me likewise a particular Direction to what Person, and in what Form, I was to send my Order for the Payment of the Money. I forbore likewise to answer this Letter, till I had received an Answer from the Lord Lieutenant; who then inform'd me at large, what Title I had to this Money, and how I came to have it: That shortly after the passing of that Act of Parliament which had given his Majesty the Disposal of the Money before-mention'd, the Earl of *Orrery* had come to him, and putting him in mind how the *Chancellor* had rejected all Overtures which had been made to him of Benefit out of that Kingdom,



dom, (which Refusal, and many others, which shew how unsollicitous I have always been in the Way of getting, is not more known to any Man living than to the Lord Lieutenant,) wished that he would move his Majesty to confer some Part of that Money upon him; which the Lord Lieutenant very willingly did, and his Majesty as chearfully granted: That a Letter was accordingly prepared, and his Majesty's Royal Signature procured by Mr. Secretary *Nicholas*, who was at the same Time commanded by the King, not to let me know of it; and to which Purpose there was likewise a Clause in the Letter, whereby it was provided that I should have no Notice of it, which the Lord Lieutenant said was by his Majesty's Direction, or with his Approbation; because it was said, that if I had Notice of it, I would be so foolish as to obstruct it myself: And that there was a Clause likewise in the said Letter, which directed the Payment of the said Money to my Heirs, Executors, or Assigns, if I should die before the Receipt thereof. Of all which being thus fully advertised by the Lord Lieutenant, and of which till that Time I had not the least Notice or Imagination, I desired Mr. Secretary *Nicholas* to give me a Copy of that Letter, (which had been since passed as a Grant unto me under the Great Seal of *Ireland*, according to the Form of that Kingdom;) which he gave me, with a larger Account of many gracious Circumstances in the King's granting it, and the Obligation laid upon him of Secrecy, and the great Caution that was used that I might have no Notice of it. After I was inform'd of all this, I did not think there was any thing left for me to do, but to make my humble Acknowledgement to his Majesty for his Royal Bounty, and to take care for the receiving and transmitting the Money to me, and that I might receive the same very honestly: I did thereupon wait upon his Majesty with that Duty which became me; and his Majesty was graciously pleased to enlarge his Bounty with those Expressions of Favour, and the Satisfaction he had vouchsafed to take himself in the conferring his Donative, that my Joy was much greater from that Grace, than in the Greatness of the Gift.

At the very same Time, and the very Day that I received the Letter from the Lord Lieutenant, the late Earl of *Portland* had come to me, and informed me of a Difference that was fallen out between the Lord *Lovelace*, and Sir *Bulstrode Whitlocke*, upon a Defect in the Title to certain Lands purchased heretofore by the said Sir *Bulstrode Whitlocke* from the Lord *Lovelace*, and possessed by the other for many Years: That the Lord *Lovelace* had been compell'd, in the late ill Times, for the raising of Money to pay his Composition, and other necessary Uses, to make Sale of his Manor of *Blunsden* in the County of *Wilts*, and that Sir *Bulstrode Whitlocke* had purchased the same from him at a less Price than in truth it was worth: That though the Conveyances had been made and executed with all the Formality the Doctrine of that Time required; and that the Lord *Lovelace* had covenanted, that his Son, who was then under Age, should join in the same Assurance when he should accomplish the Age of One and Twenty, which he had now newly done about the Time we are mentioning; and that the Lord *Lovelace* was resolved, though

he was in his Person liable to the Covenant, to take Advantage of the Alteration of the Times, and to compel Sir *Bulstrode Whitlocke* to pay him more Money; or that his Son, who was Tenant in Remainder, should enter upon the Land. The Earl said, that he desired to make an End between them; and that the Lord *Lovelace* (whose great Friend he was) should receive some more Money, which his Condition required, without so great a Damage to Sir *Bulstrode Whitlocke*, as by the Law he would be liable to, however the other might suffer in his Person; that upon Conference between them, he found that the Manor of *Blunsden* was joined to some Land I had in *Wiltshire*, and would be very convenient to me, and therefore wished that I would purchase it at a just Value, which would produce a Satisfaction to both the other. This Proposition being made upon the very Day, as is said before, that I received the Letter from the Lord Lieutenant of *Ireland*, by which it appeared that there was near as much Money already received for me as would pay for that Purchase, besides what would be more received within Six Months after, I wished the Earl of *Portland* to bring both the Persons concern'd to me within Two Days, in which Time I would resolve what to do; nor did I need much Time to consider of it; the Person who then rented the Whole, and the Land itself, being very well known to me: So that when they all came to me at the Time appointed, after a very short Conference together, we agreed upon the Purchase, and appointed the Writings to be prepared and executed as soon as might be; when I promised to pay more Money together than is usual in such Purchases, presuming I could not at all be disappointed in the Return of that Sum of Money from *Ireland*, which was the sole Ground and Encouragement I had to undertake that Bargain: But the very next Letters I received from thence informed me, that the Necessities of that Kingdom had been such, that they could only return me Six Thousand Pounds, and that they had been forced to make use of the rest for the Publick, which would without doubt take care to repay me again within a few Months; and so I found myself engaged in a Purchase which I could not retract, upon a Presumption of Money which in that manner I was disappointed of: And I have not only never since received a Penny of what was due upon the Second Payment, (and which I presumed would have been so certain, that I assigned it upon the Marriage of my Second Son to him, as Part of his Portion,) but the Remainder of the first Sum was so borrowed or taken from me, that no Part of it hath been since paid to me, or to my Use: By which, and the Inconveniencies and Damage which hath since ensued to me from thence, I may reasonably say, that I am yet a Loser, and involved in a great Debt by that signal Bounty of his Majesty, which I hope will, in due Time, be made good to me under so good a Security as an Act of Parliament; and I have great Reason to complain of those my very good Friends who first disposed his Majesty to that Act of Grace, and were not afterwards solicitous enough in their several Places to make it effectual to me. And this is a very true Account of all that Business, and of all the Money which I ever received from *Ireland*, with all the Circumstances thereof; which, I hope, in the

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Judgment of all impartial Men, will not reflect to the Prejudice of my Integrity and Honour.

The Sixteenth Article is, *That I have deluded and betrayed his Majesty and the Nation, in all Foreign Treaties and Negotiations relating to the late War.*

I do heartily wish that those particular Treaties, and the Particulars in those Treaties, had been mentioned, wherein it was conceived that I had deluded and betrayed his Majesty; that I might have at large set down whatsoever I have known and done in those Treaties; and then it would easily have been made appear how far I have been from betraying and deluding him: It was never any Ambition of my own that brought me to have a Part in any Treaty; God knows; I heartily wished to have meddled in nothing but the Administration of that great Office the King thought fit to entrust me with; but his Majesty had so good an Opinion of me then, that he required and commanded my Service in many of those Treaties; and therefore it will be necessary for me, according to the Method I have hitherto used, to mention every particular Treaty that hath been entered into, since the Time of his Majesty's Return into *England*, and the Part that I have had in it: Being as willing to be called to the strictest Account for any other Treaty he had made when he was Abroad, or for any other Counsel I have ever given him in my Life, publick or private; wherein, I doubt not, I shall be found to have behaved myself (according to the weak Abilities God Almighty hath given me) with Fidelity to my Master, and with all imaginable Affection to my Country; how unhappily soever I am represented.

The first Treaty was with the Crown of *Portugal*, in which I was none of the Commissioners who treated, and was only present when any Report was made by the Commissioners to the Council-Board, where all the Articles were debated; and I do not remember that there was any Difference of Opinion upon any of them; and that Treaty hath been generally held the best that hath been made with any Crown, the Merchants having thereby greater Advantages in Trade than they have in any other Place, besides many other great Benefits, with a great Enlargement of his Majesty's Empire.

The second Treaty was with the *States* of the *United Provinces*, in which likewise I was none of the Commissioners who treated; but all that was by them transacted was still brought to the Council-Board, and debated there in his Majesty's Presence; in which the Rule by which his Majesty guided himself was, as I remember, that he would not remit any of those Concessions which had been formerly made by them in their last Treaty with *Cromwell*; and their Unwillingness to consent to that was the Reason that their Ambassadors proceeded so slowly: And his Majesty had the less Reason to be solicitous for Expedition, because the King of *France* had given him his Royal Word, and proposed it himself, that the Two Crowns might proceed in their several Treaties with the *Dutch* together, that so they might be brought to such good Conditions, that they might live like good Neighbours with both the Crowns; which he observed they were not naturally inclined to do; and promised positively, that for his Part, he would not conclude any thing with

the *Dutch*, before he had entirely communicated the same to his Majesty. Notwithstanding which Engagement, *France* entered into and finished their Treaty, and in it made that secret Article which they declared afterwards to be the Ground and their Obligation to assist the *Dutch* in the ensuing War. However, his Majesty proceeded not, till the *Holland* Ambassadors consented to all which had been granted before to *Cromwell*; which being done, the Peace was made and ratified on both Sides, and, without Doubt, with more Advantage and Honour to the *English*, than ever had been provided by any former Treaty between the Crown of *England* and those States.

From the two Crowns of *Sweden* and *Denmark*, Ambassadors Extraordinary arrived here shortly after his Majesty's Return, and the several Treaties were made with both those Crowns before the Departure of the Ambassadors; in neither of which Treaties I was a Commissioner, nor knew any thing that passed in either; but as it was represented at the Council-Board; and debated in his Majesty's Presence; nor did I ever hear that either of them was reckoned a disadvantageous Treaty, both of them containing as much Benefit to the *English* as any Treaties which had been made before with those Crowns. It is very true, there were some unusual Expressions of Kindness and Friendship in the Treaty with *Denmark*; which, in respect of that King's being at that Time in a very low Condition, under the disadvantageous Conditions of the Treaty of *Copenhagen* newly submitted to, and under almost as ill a Treaty extorted from him by the *Dutch*; and yet being in terrible Apprehension of some new Oppression from the one and from the other, the Ambassador did very earnestly solicit to have inserted, and were, upon great Deliberation, allowed and inserted by his Majesty's own particular Direction; in Consideration of the near Alliance in Blood between his Majesty and that King; and the Civilities and Obligations his Majesty had received from *Denmark*, during his Majesty's being in *Holland*, after the Murther of his Father; and during his being in *Scotland*, when the King of *Denmark* sent him Horses, Arms and Ammunition; of which his Majesty had so great a Sense, that he was often heard to say, That if it had pleased God to have brought him Home before that disadvantageous Peace at *Copenhagen* had been made, which was done by the Countenance of the *English* Ships, and the Threats of those who were then Ambassadors from the governing Power in *England*, that he would have done the best he could to have defended and protected him; and therefore he did very readily yield to that Article drawn by the Ambassador; his Majesty declaring at the same Time, that he was very willing that those Princes who were Neighbours to *Denmark*, and from whom that Kingdom apprehended new Oppressions, should know his Majesty's Resolution to support that King, and to defend him from new Injuries, to which the Policy of his Government, as well as his Inclination, invited and obliged him: though it is very true, the King of *Denmark* did shortly after make very ill Returns to his Majesty for that his so signal Affection.

These were all the Treaties made by the King before the War with the *Dutch*, for there was very little Progress made either with *France* or *Spain* for the Reasons mentioned before, except



only a short Treaty with the Elector of *Brandenburg*; which Treaty, for the most Part, was particular with reference only to the Prince of *Orange*, his Majesty's Nephew, and for the better ordering of his Affairs; in which Treaty his Majesty likewise employed Five or Six of his Privy-Counsellors; and the few Articles between his Majesty and that Elector in Point of State, were likewise transacted by them, and debated and considered at the Council-Board, and in which all Things were inserted for his Majesty's Benefit and Service; and if they had not been afterwards violated by the Elector, his Majesty had reaped much Fruit and Advantage even by that Treaty.

After the War was entered into with *Holland*, his Majesty sent Mr. *Coventry* to *Sweden*, and Sir *Gilbert Talbot* to *Denmark*, to dispose those two Crowns to a Confidence in each other, and then to dispose them both to adhere to his Majesty, or at least not to favour or assist the *Dutch*. The Treaty with *Sweden* succeeded to his Majesty's Wish, and was concluded in a League Defensive, very much to the King's Satisfaction, and with the full Approbation of the whole Board; that Crown having manifested so much Affection to his Majesty, and such an Inclination to an entire Conjunction with him, that upon very reasonable Conditions they would have been induced to have entered into a League Offensive, and even in the present War against the *Dutch*: In order to which, they sent their Ambassadors hither, at the same Time when Mr. *Coventry* returned, and they became the Mediators for the Peace; having first declared to his Majesty, that if the Treaty should prove ineffectual, the Crown of *Sweden* would immediately join with his Majesty in the War against the *Dutch*. What became of the other Treaty with *Denmark* is publicly known, his Majesty having declared to all the World how perfidiously he was treated by the *Dane*.

There remains only One other Treaty to be mentioned, which is the last with the *Dutch*, upon which the Peace was made; and therefore it will be necessary to set down the Inducements to that Treaty, the whole Progress and Conclusion of it: By all which it will easily appear that his Majesty was neither betrayed or deluded in it; or if he were, that it was not done by me. After so many Encounters and various Successes in the War, which had been carried on with a much greater Expence than his Majesty, at his first Entrance into it, was persuaded it would cost him, when he saw the Strength and Power of the *Dutch* so much increased by the Conjunction of *France* and *Denmark*, which supplied them with Money, Ships, and (what they had more wanted) with Men as many as they desired; and that all the Propositions he could make to *Spain* could not induce them to enter into such an Alliance with him as might embark them against *France*; notwithstanding it was evident to all but themselves, that the *French* resolved to break the Peace with them, having at that Time published those Declarations, which they afterwards made the Ground of the War: His Majesty clearly discerned, that the *Dutch* grew less weary of the War than they had before seemed to have been; and that they would be able, with that Assistance and Conjunction, to continue the War with less Inconvenience than his Majesty was like to do. He had found it necessary for the straightning the Trade of the

Enemy (the depriving them of which could only induce the *Dutch* to desire a Peace, and which he could not do by the Strength of his own Ships, which were still kept together to encounter their Fleet) to grant as many Commissions upon Letters of Mart to private Men of War as desired the same, and with such strict Orders and Limitations as are necessary in those Cases; and he found indeed the Advantage very great, in the Damage those Men of War did to the Enemy, which was considerable, and gave them great Trouble: On the other Side, the common Seamen chose much rather to go on board those Men of War; where their Profit out of their Shares of the Booty was greater, and their Hazards much less than in the King's Ships, where they got only Blows without Booty, though their Pay and Provisions were much greater than they had been in any former Times; so that when the Royal Fleet was to be sent out, there was greater Difficulty in procuring Seamen and Mariners to man it. And then, whereas the Advancement of Trade was made the great End of the War, it was now found necessary to suppress all Trade, that there might be Mariners enough to furnish the Ships for the carrying on the War; and this Inconvenience produced another Mischief, for by the great Diminution and even Suppression of Trade, there was likewise so great a Fall in the Customs, Excise, and all other Branches of the King's Revenue, that it was evident enough, that his Majesty would have very little to carry on the War, but what should arise by Imposition in Parliament upon the People; who already complained loudly of the Decay of their Rents, of the small and low Prices which their Commodities yielded by the Cessation of Trade, and especially by the carrying out of all the Money in Specie from the several Counties, to *London*, for the carrying on of the War; and the Parliament itself appeared to be so weary of it, that instead of granting a new Supply proportionable to the Charge, they fell upon Expedients to raise Money by Sale of Part of the King's Revenue, which was already too small to support the ordinary and necessary Expence of the Crown: But above all, his Majesty was most discouraged by the extreme Licence of the Seamen in general; but especially of those who were called Privateers; set out in the particular Ships of War upon Adventure, who made no Distinction between Friends and Foes; but, as if the Sea had been their own Quarters, they seized upon all Ships which came within their View, and either pillaged them entirely, and so dismissed them, (which they usually did to those which they foresaw would be delivered by the Course of Justice) or else brought them into the Harbours after they had taken from them what they best liked. And then the formal Proceedings in the Court of Admiralty were so dilatory, and involved in so many Appeals, that the Prosecution of Justice for Injuries received grew as grievous as the Injury itself; which drew a universal Clamour from all Nations, that without being Parties to the War, they were all treated as Enemies. *France* had made the Damage they had this Way received, and the Interruption of their Trade, a great Part of their Quarrel, and one Ground of their Conjunction with the *Dutch*. From *Spain*, which really wished better to us than to our Enemies, the Complaints were

were as great; that their whole Trade was destroyed; their Ships of *Flanders*, which supplied *Spain* with what they wanted for themselves, and with what was necessary for their Trade and Intercourse with the *Indies*, were all taken as *Dutch*, because it was very hard to distinguish them by their Language; which was likewise the Case of all the *Hans Towns*, which made grievous Complaints, and had, without doubt, received great Damage. Those Provinces of *Italy*, whose Dominions reached to the Sea, as the two Republicks of *Venice* and *Genoa*, and the Duke of *Florence*, expostulated very grievously for their several Ships taken by those Free-booters of *Scotland* and of *Ireland*, both which Nations enriched themselves very much upon such Depredations; and how much soever the Royal Navy was every Day weakened, the Number of the Men of War wonderfully increased: So that those Kind of Ships, of *England*, *Scotland*, and *Ireland*, covered the whole Ocean; and of those Ships which were taken and carried into *Scotland* or *Ireland*, (in *England* there were many Re-deliveries) it was observed, that there were *Vestigia nulla retrorsum*. Even *Sweden* itself, with whom a new stricter Alliance was then entered into, with as severe Restrictions to that Licence of the Men of War as could be contrived for the Liberty and Security of the Trade of that Crown, complained exceedingly of the Violation of all those Concessions and Provisions, and that their Ships were every Day taken and plundered. And this universal Complaint began to awaken all Princes to a Jealousy, that the *English* endeavoured to restrain all Trade, till they could make themselves the entire Masters of it. And it is very true, in the first Entrance of the War there had been many unskillful Expressions, even in the Parliament as well as in the frequent Discourses of Parliament-Men, that by this War, and by suppressing the *Dutch*, (of which they made not the least doubt) the King would be able to give the Law to all the Trade of the World, and that no Ships should pass the Sea without paying some Tribute to *England*; which Liberty and Rashness in Discourse, made a great Impression upon those who wished any Mischief to the *Dutch*, till they saw what Danger might ensue to themselves by the Success of the *English*; and thereupon wished that they might break themselves upon each other, without Advantage to either Party: And this general Temper and Complaint made the deeper Impression in his Majesty, by his discerning an extreme Difficulty, if not an Impossibility, to give a just Remedy to it; and consequently, that he should be shortly looked upon as a common Enemy. He had taken very great Pains, upon deliberate Consultations, to suppress that odious Irregularity and destructive Licence that was practised amongst the Seamen, and had, in many particular Cases, himself examined the Excess, and caused exemplary Justice to be done upon the Offenders, and Restitution to be made of what had been taken, at least of what was left; for no Justice could preserve the injured Persons from being Losers: He granted such Rules and Privileges, and Protection to the Ports of *Flanders*, and to others of his Allies, as themselves desired, and looked upon as their full Security; but then he quickly found, that from those very Ports, and in those very Ships which enjoyed

those Privileges, the Trade of the *Dutch* was driven on: So that it was evident enough, that by that Liberty which other Nations thought themselves in Justice intitled to, if not restrained, the *Hollanders* themselves would be easily able to carry on their whole Trade in the Ships of *Flanders*, *Hamborough*, and the other Free Towns, or in their own Ships owned by the other; and that the Restraint would be likewise impossible, without a total Suppression of the Men of War, and a Revocation of all Commissions granted to any of them; which must likewise be attended with the Freedom and Security of Trade to all his Majesty's Enemies. In the last Encounter at Sea, the *Prince Royal*, and Three others of his Majesty's Navy, had been lost; and another (the *London*) had been burnt in the River by the Negligence of the Seamen; for there was never any Discovery made, that there was any Purpose or Malice in it: The *French* had obliged themselves, that the Duke de *Beaufort*, Admiral of *France*, should, with the whole Fleet under his Command, amounting to Eighteen good Ships, join with the *Dutch*; and the King of *Denmark* was likewise engaged to send all his greatest Ships, which were Ten or a Dozen, in order to the like Conjunction. So that his Majesty clearly discerned that the Enemy would be much superior to him in Strength and Power, though he should have been able to have manned and set out all his Royal Navy; which he very well foresaw he should not be able to do, both for Want of Money, and Want of Seamen, who were already in great Disorder and Mutiny for Want of their Pay, of which there was indeed a great Arrear due to them; and which was worse, there was grown such an Animosity amongst the principal Officers of the Fleet between themselves, that the whole Discipline was corrupted; so that it was hard to resolve into what Hands to put the chief Government thereof, if it could have been made ready. Upon which, and the whole State of Affairs, upon Deliberation and frequent Consultation with the principal Officers of the Sea, and such others whose Experience in such Matters rendered them most capable to give Advice, his Majesty found it most counsellable to resolve to make a defensive War the next Year, and to lay up all his great Ships; and to have some Squadrons of the lighter Vessels continue in several Quarters assigned to them, which should be ready to take any Advantage which should be offered; and that there should be likewise ready in the River another good Squadron of Ships against the End of the Summer, which being ready to join with those which lay out, when the Enemy was weary, and their Ships foul, should be able to make many notable Advantages upon them; of which they who advised it were so confident, that they did believe this Defensive Way thus ordered and prosecuted, would prove a greater Damage to the Enemy in their Trade, and all other Respects, than they had ever yet undergone. And in all this Counsel and Resolution I had no other Part than being present; and not understanding the Subject Matter of the Debate, I thought myself not to be able to answer any of the Reasons which had been alledged.

These Considerations, upon a full Survey of his ill Condition at Home and Abroad, induced his Majesty to wish that there were a good End  
of



of the War; which Inclination his Majesty vouchsafed to inform me of, well knowing that I would be very glad to contribute all I could to it, as the Thing I desired most in this World, and which I thought would prove the greatest Benefit to the King and Kingdom; and his Majesty likewise told me, that he found all those who had been most forward and impatient to enter into this War, were now weary of it, and would be glad of a Peace: So that there remained now nothing more to do, than for his Majesty to advise with whom he thought fit (for there seemed many Reasons to conceal both the Inclination to Peace, and the Resolution not to set out a Summer Fleet, from being publickly known) what Method to observe, and what Expedients to make use of, for the better securing this wished for Peace, without appearing to be too solicitous or importunate for it, or so weary of the War as in truth he was; and to this Consultation his Majesty was pleased to call, together with his Royal Brother, Prince *Rupert*, the General, the Lord Treasurer, myself, and those other honourable Persons with whom he used to advise in his most secret and most important Affairs.

That which occurred first was, to consider whether there were any Hope of dividing the *French* from the *Dutch*; upon which Supposition the Prospect was not unpleasant, the War with one of them being hopefully enough to be pursued; the Conjunction was only formidable: And to this Purpose several Attempts were made both in *France* and *Holland*; both Sides being equally resolved not to separate from each other, till a joint Peace should be made with *England*, though they both owned a Jealousy of each other; those of *Holland* having a terrible Apprehension and Foresight of the King of *France's* Designs upon *Flanders*, which would make his Greatness too near a Neighbour to their Territories; besides that the Logick of his Demands upon the Devolution and Nullity of the former Treaty upon the Marriage, was equally applicable to their whole Interest, as it was to their Demands from the King of *Spain*: And *France*, upon all the Attacks they had made both in *France* with the Ambassador there, and in *Holland* by their own Ambassador, found clearly, that they were to expect no Assistance from the *Dutch* in their Designs, and that at least they wished them ill Success, and would probably contribute to it upon the first Occasion; and this made them willing to determine their so strict Alliance, which was already very chargeable to them, and not like to be attended with any notable Advantage, except in weakening an Ally from whom they probably promised themselves more good. However, neither the one nor the other could be induced to enter into any Treaty apart, though they both seemed willing and desirous of a Peace; in order to which, the *Dutch*, through the *Suedes* Ambassadors Hands, had writ to the King, to offer a Treaty in any such neutral Place as his Majesty should make choice of; professing that they should make no Scruple of lending their Ambassadors directly to his Majesty, but that their Conjunction with the other two Crowns, which required a neutral Place, would not admit that Condescension; and at the same Time they intimated to the *Suedes* Ambassadors, that the King of *France* would not send his Ambassadors into *Flanders*, or any Place of the King of *Spain's*

Dominions; and therefore wished that his Majesty would make choice of *Disseldorp*, *Cullen*, or *Francfort*, or *Hamborough*, or any other Place which his Majesty should think more convenient than the other, under that Exception: All which Places, and in truth any other out of the King of *Spain's* Dominions, were at such a Distance (the Winter being now near over) that there could be no reasonable Expectation of the Fruit of the Treaty in Time to prevent more Acts of Hostility.

About this Time the Earl of *St. Albans* having been sent into *England* by the Queen-Mother upon her own particular Affairs, Monsieur *De Ruigny* did write to him, that that Court did earnestly desire a Peace; and that, if he were in *France*, he did believe some Expedient might be found that would produce the same; and he continued for many Weeks together to write very earnestly to the Earl of *St. Albans* to come into *France* with Authority to treat and conclude a Peace, and that it might be made before suspected. All which Letters the Earl shewed to his Majesty. Monsieur *De Ruigny* was a Person very well known to the King, and many others in the Court, to be too wise a Man to write upon such a Subject, and in such a Manner, without very good Authority; and that he was likewise a Man of Honour, and would not suffer himself to be made use of upon any unworthy Design; and therefore his Majesty concluded, that it would be fit that the Earl of *St. Albans* should transport himself into *France*; who having dispatched all the Business for which he was sent by the Queen, his Return could administer no Cause of Jealousy to any; nor had he so much as a Letter of Credit from the King, and only had Direction to understand from Monsieur *De Ruigny*, upon what Ground he had so earnestly invited him over, and to receive any Proposition he or any body else should offer in order to Peace, which he should transmit to his Majesty, and expect an Answer; with a positive negative Instruction, that if any Proposition should be made to him to oblige his Majesty to assist the *French* against *Flanders*, he should utterly reject it.

At the same Time the Baron *De Iffola*, who was Envoy from the Emperor, and a much more dexterous Man than the *Spanish* Ambassador, and so more relied upon in *Madrid* as well as *Vienna*, in those Affairs which concerned their joint Interest, pretended to have received Letters from *Holland*, by the Consent and with the Privy of *De Witt*, that they had there a great Mind to Peace; and that if *De Witt* (who was looked upon as the only Man that opposed it) might receive any Assurance of the Good-will and Protection of the King, he would be willing to negotiate the Peace, whether *France* should be willing to it or no; and the Baron (who had nothing more to solicit on the Emperor's behalf) offered immediately to take his Leave and return to *Brussels*, and from thence he would go incognito to the *Hague* and confer with *De Witt*, and would thereupon give his Majesty Advertisement what he might depend upon. The King would have thought the better of any Peace that had been procured without the Interposition of *France*, and therefore willingly consented to his Journey; and gave him Leave to assure *De Witt*, that he should find all possible Good-will and Friendship from his Majesty, and that

that his Majesty desired nothing more than a just and an honourable Peace, and upon such Conditions as might make it lasting.

Whilst these Matters were in Agitation in *France* and in *Holland*, the *Swedes* Ambassadors earnestly solicited for an Answer to the Letter they presented to his Majesty from the *States*, concerning a Neutral Place; which put his Majesty to another Deliberation. Not to return any Answer, would be interpreted a Refusal of the Treaty, and so make his Majesty appear to all Christian Princes to be better pleased with the War. To accept of any of those Places insinuated from the *Dutch*, would be against his Dignity, in so far condescending to the unreasonable Imposition of the King of *France*; and yet to nominate any Place in *Flanders* for the Treaty, after *France* had so positively declared itself, would be interpreted both by *France* and *Holland* as a Rejection of the Treaty, at least would make *France* less solicitous for a good End of it. When his Majesty called that Committee of the Board to consult upon some Expedient in this Affair, he proposed himself one Expedient, which I am sure I had not heard of before; which was, to make choice of the *Hague* for the Place to treat in. The Condescension to *Holland*, in sending his Ambassadors to treat in their own Province, was not, upon a Disquisition of it, thought to be of that Importance, as to neglect the Benefits and Conveniencies which might reasonably be expected from the having it in that Place. The People were not only generally very weary of the War, and desirous of a Peace, but the *States* themselves were very much divided, and *De Witt* had been exposed to many Difficulties and Reproaches, under the Character of being the sole Person who desired the Prosecution of the War; and he had prevailed most, by taking upon him to assure the *States*, that the King had no Thoughts of Peace, but only laboured to separate *France* from them, and divide them amongst themselves. There could not be a greater Manifestation of his Majesty's ardent Desire of Peace, than by offering to send his Ambassadors to the Place where the Body of the *States* themselves resided, and who would be the only Judges of the Reasonableness of what his Majesty should propose, and by being upon the Place might give all Expedition to the Work: Besides, that all other Princes concerned had their Ministers likewise there; and therefore if his Majesty's Overture in this Particular should be rejected, all the World would conclude that the *Dutch* would not endure so much as to hear of Peace. And upon these Reasons the Resolution was taken to name the *Hague* for the Place of the Treaty; and his Majesty's Letters were dispatched accordingly.

The first News we heard from *Paris* and the *Hague*, after the Earl of *St. Albans* being arrived there, and the Baron *De Iffola* at *Brussels*, was a great Complaint, that the King had sent the Baron *De Iffola* privately to the *Hague* with Overtures of Peace; but especially with Design to divide *Holland* from *France*, and to persuade them to break their Alliance with them; in which there were some particular Expressions which his Majesty had in truth used to the Baron *De Iffola*, and many other which he had never used. The King had Reason to conclude from hence, that

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*De Witt* was never to be treated withal privately; and that the Baron *De Iffola* was not to be trusted, he having persuaded and prevailed with his Majesty to give him leave to speak with *De Witt* upon some Letters he had shewed the King from Monsieur *Friquet*, the Emperor's Envoy at the *Hague*, a Gentleman not unknown to his Majesty, and of a very clear Reputation; wherein there was Mention of a Discourse made by *De Witt* to him, which might very well encourage the King to give that in Charge to the Baron which his Majesty had in truth commended to him: Nor in truth had it been material, if he had said no more than his Majesty gave him leave to do; which yet he promised not to mention, except he clearly discerned the other to be very willing to deal as freely with his Majesty; but it plainly appeared that the Baron had far exceeded his Commission, and said many things for which he had not any Power, and which in truth had never passed in Discourse between the King and him. And as the King of *France* had always expressed the greatest Prejudice, and the most bitter Jealousy, from the Time that the Baron was designed for *England*, as a Person who delighted in nothing so much as in puzzling and perplexing, and creating Intricacies in all Treaties in which he had ever been engaged, which had been many in several Courts of *Christendom*; so indeed his Parts were most proportioned for embroiling and for preventing any Conclusion, in which he gave himself leave to say and do any thing which he thought would contribute to his End, without the least Consideration of Ingenuity or Sincerity in the Matter; though otherwise it cannot be denied that he was a Man of great Parts, and of a universal Understanding in the Affairs of *Christendom*.

At the same time the King of *France* complained of the Authority given by his Majesty to the Baron *De Iffola*, we found in the *Dutch* printed Gazette the Copy of a Letter written then by the King of *France* himself to the *States*; in which he informed them of the Earl of *St. Albans* being newly come to him with Propositions from the King of *England* in order to Peace; and that he had a Plenipotentiary Commission to treat and conclude, mentioning some of the Conditions he had offered; and therefore desired that they would arm their Ambassadors in *France* to join in the Treaty. This gave his Majesty great Offence, and just Cause to suspect that whatever Pretences *France* had made, it did not at all desire the Peace; and he had the more Reason to complain of this Injury, because there was not the least Colour or Ground of Truth in the Relation, the Earl of *St. Albans* having not any thing like a Commission; nor, as he protested upon this Occasion, (whereof he had likewise taken Notice at *Paris*, and complained before he could have any Advertisement from *England*) had he ever pretended to have the least Power from his Majesty; nor had he ever mentioned any of those Particulars to any Person which were so formally inserted in that King's Letter to the *States*: And his Majesty was the more confirmed in his Belief that *France* would not contribute to the Peace, because they did at this very Time, with equal Passion to *De Witt* himself, oppose the Treaty at the *Hague*; against which they could have no Reason to except, if



they had a Mind to the Peace, unless they hoped by the Trick that is mentioned before, to have got the Treaty to *Paris* by a Commission to the Earl of *St. Albans*; which they had tried all the Ways they could to obtain, and his Majesty had as positively refused to grant, and then resolved to insist on the *Hague*, or upon some Place in *Flanders*, let the Success be what it would.

During this Agitation, an Express was sent over from the Earl of *St. Albans*, with two Papers which he had received from Monsieur *De Lyonne*, and both in his own Hand, which Originals were sent to the King; the one contained a Proposition for the Peace, that there should be no Mention of the Charges of the War, or the Damages received by it on either Side; but that it should be in his Majesty's Choice, whether all Things should remain in the State they were at present, either Side to keep what it had taken, and were possessed of by reason of the War; or that both Sides should come to an Accompt, and either be repaired by the other for the Damages it had sustained; and that after his Majesty had made his Election of those two Particulars, from thence the Peace should be observed between the King and the *Dutch*, according to the last Treaty which had been made at *London* after his Majesty's Return: The other Paper was a Proposition made to his Majesty, that he would promise under his Hand that he would not, during the Space of a Year to come, enter into any Treaty to the Prejudice of *France*, nor give any Assistance against *France* during that Year, this Overture being made about the Beginning of *March*; and in Consideration hereof, the King of *France* would restore the Island of *St. Christophers*, which he had newly taken from the *English*, and would undertake that the *Dutch* should consent to the Peace upon the Conditions formerly mentioned; and that the Treaty should be, if his Majesty desired it, at *Dover* or *Canterbury*, since it would not be possible to persuade *De Witt* ever to consent that it should be at the *Hague*; which he looked upon as a Design only to countenance the Party of his Enemies: And at the same time the *States* writ again to the King, and offered to treat at *Dover* or *Canterbury*.

Though his Majesty had, in all his Answers to the *Dutch*, demanded Satisfaction for the Damages he had sustained, and for the Charge of the War; and made little Doubt, if *France* had not entered into that Conjunction, that they would have been induced to have made some Compensation towards it; yet the Case was now altered, and they thought themselves by the new Alliances to stand upon the Advantage Ground, so that his Majesty found any Demand of that kind would not be submitted to; nor, in truth, had the like been insisted upon in any Treaties of this Age, after the longest or sharpest War that had been made. Hereupon, after full Deliberation, his Majesty was well contented to accept of the Propositions made by the King of *France* for the Peace, and made choice of the First Alternative, that both Parties should be contented to enjoy what they had got without any Accompt, the *Dutch* having lost very much more than the *English*; and we having taken from them in *Guinea*, and upon that Coast, more important Places than they had taken from Us: and the Restitution of *St. Christophers* by the King of *France*, put his Majesty into the same Condition in his

Plantations in the *West-Indies*, as he had been before the War.

When his Majesty thought that all Things upon the Matter had been adjusted, and cared the less where the Treaty should be; and having sent such an Answer into *France* as was punctually agreeable to what had been thence desired; he received another Dispatch from thence, with infinite Excuses, and Protestations of Sincerity, that the *Dutch* had expressly refused to consent to a Peace, except the King would remit and part with the Island of *Polaroone* in the *East-Indies*; an Island which had been formerly taken by the *Dutch* from the *English* with very foul Circumstances; and the Re-delivery whereof was promised by them in their Treaty with *Cromwell*, and again renewed in their last Treaty with the King, and his Majesty had sent Ships thither to receive it; which not being delivered upon Pretence of want of some Formality in the demanding, it was one of the Grounds of the present War, as an Indignity and Breach of Faith towards his Majesty: though they protested that it was only the Fault of their Governour in those Parts, who for want of an Order from the *East-India* Company, though he did receive the Order of the *States-General*, had not refused, but delayed its Delivery; and that *that* and all other Orders that could be required, were again renewed, and already sent thither, and they were confident the Place was by that time given up: It was alledged by the King of *France*, that the *Dutch* had always declared to him, in all the Discourses which had been between them of a Treaty, that they would never restore *Polaroone*: And Monsieur *De Lyonne* protested, that he had never known that the Restitution thereof was comprehended in the last Treaty, but conceived that it would fall within the Alternative, if the King should make choice of that; which he had done, or otherwise would fall into the Accompt: and concluded, with a very earnest Desire, that the King would rather yield in that Particular, than break the Treaty for an Island which was nothing worth for the present, nor could be made valuable in less than seven Years; with a Protestation still, that he would do all that was in his Power to persuade the *Dutch* to part with *Polaroone*; but if they should deny to do it, he could not separate himself from them upon that Point, since they had still mentioned it as a Condition: but if his Majesty would yield in that Particular, all Difficulties should be removed, and the Treaty concluded without any new Obstruction. This unreasonable Litigation, and the receding from what had been so fully undertaken before, removed all Confidence from his Majesty of the sincere Intentions of *France*; nor could he foresee what other new Scruples would arise from the one hand, and be admitted by the other: However, after a full Deliberation with his Council upon the whole State of his Affairs, and after having communicated to them all that had passed, he did resolve not to reject the Treaty, but was contented that *Breda* should be the Place; not thinking it fit, for many Reasons, to bring the Treaty to *Dover* or *Canterbury*, to give the Enemy that Advantage if it should prove ineffectual, that it should be broken in his own Dominions; or to make other Advantages by Infusions to the People, who were generally more dissatisfied than they had Reason to be:

And

And thereupon his Majesty named the Lord *Hollis*, and Mr. *Henry Coventry* of his Majesty's Bed-Chamber, for his Ambassadors in that Treaty, Men very well qualified for the Service, who were dispatched to *Breda* as soon as was possible, which was about the Beginning of *May*; *France* having promised, that the Fleet under the Command of the Duke *De Beaufort* should remain in the Port, and that he would use his utmost Power to dispose the *Dutch*, in the Entrance into the Treaty, to consent to a Cessation, that so there might be no more Acts of Hostility on either Side, until it might appear what Success the Treaty was like to have towards a Peace: And concerning the Business of *Polaroone*, he gave them Charge to insist upon the Delivery, and sent to the *East-India* Company, who had the sole Interest in that Island, to send their Deputies to the Treaty, who should be privy to all that should be treated upon that Affair, and who might propose or accept whatsoever they thought best for themselves; towards the obtaining whereof, *France* was so fully engaged to use their utmost Interposition.

What passed during the Treaty is known to so many, that I need not mention it here, every Dispatch from the Ambassadors being read and debated at the Council-Board; and when such Difficulties did arise that the Ambassadors would not take upon them to make any Conclusion without a particular Communication of the Temper, and Disposition, and Resolution of all the Persons concerned, they thought fit that one of themselves (the Lord Ambassador *Coventry*) should attend his Majesty, being obliged to return with his Majesty's Answer within so many Days; and as soon as he arrived, he gave his Majesty a full Account, before the whole Council-Board, of all that had passed in the Treaty; that the *Dutch* behaved themselves very insolently, and that the Authority of *De Witt* was so great at the *Hague* with the *States*, that no body durst oppose any thing he advised; that the *Dane*, by his Instigation, had made Demands of a very insolent Nature; that they believed that the *French* Ambassadors had behaved themselves very well, and done all that was in their Power to do, and had restrained the *Dutch* from their Insolence by Threats and Menaces, which they likewise used towards the *Dane*: In fine, he read all the Articles which were concluded between them; with all those which remained undetermined and unconsented to, on either Side; with what the *French* Ambassadors resolved to persuade and reduce the *Dutch* to consent to yield to, or to declare against them in their Master's Name. Upon which Report, every particular Article was at large debated at the Board, which took up many Days. The Ambassador said, there was not the least Hope of having *Polaroone* restored to the *English*; that they said it was contained in that Alternative which the King had made choice of; and when it was replied to them, that the Words of that Alternative clearly determined the contrary, for that either Side was to remain possessed of what they had got by reason of the War, which could not be applied to this Island, which they had unjustly taken and usurped so many Years before; and that they were obliged, by the last Treaty, to restore it, so that the War had no Operation upon that; to this they an-

swered, that they had, according to the Treaty, sent Orders for the Re-delivery of it, and that they believed it had been delivered accordingly; and that upon the News of the War, their Subjects had re-taken it again, which would bring it within the very Letter of the Alternative: And this our *East-India* Company was so far from contradicting, that they believed it to be true, and had shewed me, before the Treaty began, a Letter they had received from one of their Factors in the *Indies*, that there was a Report there, that the *Dutch* had delivered up *Polaroone* to those who were sent to receive it, and that shortly after that they had taken it from them again; and therefore they desired that a special Article might be inserted in the Treaty, whereby the *Dutch* might be obliged to give it up again, if they had in truth so indirectly delivered it, that they might again re-possess themselves of it; which could not but be understood to be a plain Violation of their Publick Faith, or a vile Artifice to elude it. The Ambassadors replied, that if it had been in truth delivered by them, though so indirectly taken, they could not insist upon it, but allow it to be in the Alternative; they desired only that it might be inserted in the Article, that if in Truth it had never been delivered, they should be obliged to do what so long since they should have done. The *Dutch* answered, that the End of this Treaty was to establish a firm Peace, and therefore they would admit of no doubtful Expressions which might create future Disputes. The Ambassadors said, it was very evident, and the *French* Ambassadors had acknowledged the same to them, that they were resolved never to part with the Island; so that there remained no more to be considered upon that Particular, but whether, upon the Refusal of *Polaroone*, the War should be continued. The *East-India* Company were sent for to deliver their Opinion; and they very frankly declared, that they believed a Peace to be very necessary for the Kingdom, and therefore would not that the War should be continued upon any particular Interest of theirs; and it was evident enough, that if the War continued, their whole *East-India* Trade must be destroyed, the *Dutch* being so much superior in Shipping, and all kind of Strength, in those Parts. Hereupon the King resolved to consent to their keeping of *Polaroone*; and I do not know that there was one Man at the Board of another Opinion. To conclude, after a long Debate for so many Days upon every Particular, the King resolved, with the Concurrence of the whole Board (one or two Persons only excepted) to consent to the Peace upon such Concessions and Provisions as the *French* Ambassadors had obliged themselves to bring the *Dutch* to consent to; and thereupon the Ambassador returned with full Power, and in a short time after that Peace was concluded and published. And therefore I cannot understand how his Majesty could be deluded or betrayed in that Treaty, which passed with such a full Examination and Disquisition; and in all which Debates his Majesty himself had taken the Pains to discourse more, and to enlarge himself in the Answer of all those Objections which were foreseen, than I had ever known him to do upon any other Article.



It is very true, that I had been commanded by the King to write most of the Letters and Directions which had been sent to the Earl of St. Albans from the Time of his going over, concerning the Treaty, his Lordship having (I presume by the same Direction) directed most of his Letters to me; and most of the Dispatches to the Ambassadors were likewise prepared by me, they being by their Instructions (without my Desire or Privy) to transmit their Account to one of the Secretaries, or to myself: But it is as true, that I never received a Letter from either of them, but it was read intirely in his Majesty's Presence to those Lords of the Council who attended, where Directions were given what Answer should be returned; and I never did return any Answer to either of them, without having first read it to the Council, or having first sent it to one of the Secretaries to be read to his Majesty; and I can with a very good Conscience protest to all the World, that I never did the least Thing, or gave the least Advice relating to this War, or relating to the Peace, which I would not have done if I had been expiring, and to have given an Account thereof to God Almighty that Minute: And as his Majesty prudently and piously, and passionately desired to put an End to that War; so no Man appeared more delighted with the Peace when it was concluded than his Majesty himself did; though, as far as I could make any Judgment of the Publick Affections, the Publication of that Peace was attended with the most universal Joy and Acclamation of the whole Nation, that can be imagined: Nor is it easy to forget the general Consternation that the City and the People of all Conditions were in, when the *Dutch* came into the River as high as *Chatham*; and when the Distemper in the Court itself was so great, that many Persons of Quality and Title in the Galleries and Privy-Lodgings very indecently every Day vented their Passions in bitter Execrations against those who had first counselled and brought on the War, wishing that an End were put to it by any Peace; some of which Persons, within very few Days after, as bitterly inveighed against the Peace, and against the Promoters of it. But I am so far yet from repenting or being ashamed of the Part I had in it, that I look upon it as a great Honour, that the last Service performed for his Majesty was the sealing the Proclamations, and other Instruments for the Conclusion and Perfection of that Peace, the Great Seal of *England* being that very Day sent for, and taken from me.

The Seventeenth and last Article is, *That I was a principal Author of that fatal Counsel of Dividing the Fleet about June, 1666.*

How far I have always been from giving Advice in the Prosecution of the War either by Land or Sea (except by being present at some of the Debates) I have at large set down before; I never in my Life having pretended, either in the Time when I served his late Majesty during the War, or in this King's Time, to understand any thing of that Affair: But when I have been present in Counsels of that Nature, I have always governed myself by their Opinions who had the greatest Reputation of Skill in that Profession; and I never presumed less in my Life to give an

Advice, than I did in this Particular concerning the Division of the Fleet; and I should make a full Answer to this Charge, if I should say no more, than that I am not guilty of it. But since it hath made so much Noise, to the Disadvantage of the King, and of the Conduct of his Affairs, and that no Care hath been taken to inform Men of the whole Carriage in that particular; I will, as I have done at large to the other Articles, for his Majesty's Honour, and for the Vindication of those of his Council who were present in those Debates, (how unjust soever many of them have been to me) set down very particularly all that I know of that Matter, and how the Fleet came to be divided; upon the View of which, I am of Opinion, what Misfortune soever attended it, no Man will have Cause to be ashamed of any Fault he committed in it. From the Time that his Majesty resolved to send Prince *Rupert* and the General with a joint Power and Authority to command the Fleet, there was Cause enough to apprehend that there would not have been so good an Accord between them as the conducting so great a Service required; and I was then thought to have so great an Interest in both of them, that his Majesty commanded me to use the utmost Endeavours to dispose them to a good Understanding towards each other; and I believe they will both confess, that I performed all the Offices I could, and with some Success, to that good End: And I was the more sollicitous in it, because I found that the Prince was much unsatisfied with the Resolution his Majesty had taken, that they should both go in one and the same Ship; and that his Highness was very desirous to be in a Ship by himself, and even to command a Part of the Fleet upon any Enterprize that should offer itself, separated from the other: And there was too general an Opinion, from what Ground I know not, even at the Time when our Fleet was ready, and when the two Generals went to it, that the *Dutch* were not in any degree ready to come out; that the greatest Ships had not taken in their Provisions, and that they had not Men enough to man the Fleet; and that they had no Design to come out of their Port till the Duke *de Beaufort* should be ready upon the Coast to join with them; which Fleet was then at *Brest*, and in great Readiness. I had no Part in managing the Intelligence, nor in truth so much as a Correspondence by Letter at that Time, with any Man in *France* or *Holland*. The two Generals were not many Days at Sea, when my Lord *Arlington* informed his Majesty and my Lords, that he had received Intelligence from a good Hand, that the *Dutch* were in no degree ready to come out with their Fleet; and that the Duke *de Beaufort* on such a Day of the Month had all his Fleet ready, and his Men on Board, to take the first Opportunity of the Wind to set sail from *Brest*; that the Wind had been fair these two last Days, and therefore that it might be presumed that he was by that time at Sea, and making his Course for *Holland*. Whereupon it was consulted, whether any Order should be sent to the Fleet, that Prince *Rupert* with Part of it might bend his Course towards *Brest*, whilst the General with the other Part waited the *Hollanders* Motion. There had been a long Prospect and frequent Debates upon this Contingency, and how advantageous a thing

it would prove, if we could have timely Advertisement of the Duke de Beaufort's Motion, that a Part of the Fleet might be sent to encounter him before his Conjunction with the *Dutch*; and to that purpose the Lord *Arlington* had taken all the Pains he could to get particular Intelligence of the Motion of that Fleet. When this Intelligence was communicated, some were of Opinion that his Majesty should send present Orders to the Generals, that Prince *Rupert* should with such a Number of Ships as they should think fit bend his Course as is before-mentioned. The late Lord Treasurer and I were present at this Debate; and though we seldom offered Advice in such Cases, yet being now both of one Opinion, we did desire the King, that he would not take upon himself to send positive Orders in an Affair of such Moment, upon an Intelligence that might not be true; though we believed it to be very probable, that the Generals were like every Day to know more of the Motion of the Enemy than we could do: And therefore we humbly offered it to his Majesty, whether it might not be fit in this Case, to send some of the Council then present, and who had seen the Intelligence, and heard the whole Debate, presently to the Fleet, to inform the Generals of what his Majesty had heard, and of the Considerations which had been thereupon; and if they had received no Advertisement to the contrary, and upon Conference together, thought fit to divide the Fleet, and that Prince *Rupert* should set sail in order to engage the Duke de Beaufort, his Majesty would be very well content that they should put that Design in Execution, without staying for farther Orders. His Majesty was pleased (with the concurrent Opinion of every Person present) to approve of this Proposition; and immediately made choice of Mr. Vice-Chamberlain and Sir *William Coventry*, to use all possible Expedition to find out the Fleet, and inform the Generals of all that had passed. I must not forget to say, that at this Conference, and before the Messengers were dispatched, Mr. Secretary *Morrice* informed the King, that he had received Intelligence very different from what my Lord *Arlington's* was; which was, that the *Dutch* Fleet was even ready to come out, all their Men being aboard, which was likewise commended to those two honourable Persons to make Part of their Information. The Winds were so favourable, that the two Messengers went to and returned from the Fleet with more Speed than could reasonably have been expected; they reported to the King, that they had imparted all his Commands to the Generals, and that they had had full Conferences together upon it; that by all the Intelligence they had received, they did conclude, that the *Dutch* were not ready to come out; and therefore they thought it very counselable, that the Prince should endeavour to meet with the Duke de Beaufort; and in order to that, they had agreed before their coming away, and had agreed what Ships should attend Prince *Rupert*, and what should stay behind with the General, which they resolved should be executed by such a Time, if they did not receive his Majesty's Orders to the contrary; which his Majesty did not think fit to send, since they were of the same Mind, and so they separated each from other, as was agreed. I have heard (but I was not then

present) that upon a more certain Intelligence that the *Dutch* Fleet was come out, Orders were sent to hinder the Prince from going out; which, if they had been transmitted with Care enough, would have come to him in time: But there being some Negligence in that, they came not to him time enough to return till the second Day of the Engagement; which is so well known that I need not enlarge upon it. And this is all that I know of the dividing the Fleet; in which I do not know that any Man can be justly blamed with more Reason than all Men may be, whose Counsels have not that Success which is desired; and if there were any Fault committed, I am sure there is no Colour to impute it to me, nor am I in the least degree responsible for any Consequence upon it.

I have now, according as my Memory hath been able to supply (for I have not any Paper or Note by me for my Assistance) answered every particular Charge against me; I hope so fully, that, how powerful soever my Enemies shall be yet able to appear, as they do continue very powerful, all indifferent Men will absolve me from any Guilt: And though I neither do or can expect any thing of Justice or Ingenuity from those Persons who have by all the evil Arts imaginable contrived my Destruction, by infusing into his Majesty's Ears Stories of Words spoken, and Things done by me, of which I am as innocent as I was when I was born, and other Jealousies of a Nature so odious, that themselves have not the Confidence publickly to own; yet, I say, notwithstanding all this Disadvantage for the present, I do not doubt but that Posterity, if not the present Age, will clearly discern my Integrity and Innocence in all the Particulars which are objected against me, and lament my present Sufferings, that after so many Years of very faithful and painful Service, I should be banished my Country, and forced to seek my Bread in foreign Parts at this Age. However, it concerns me very much to wipe off one Reproach which I may seem to have brought upon myself, by my withdrawing and secretly flying out of the Kingdom, to avoid, as it may be thought, the Justice of Parliament; which, as it is made the Ground and Foundation of the Act of Banishment, so I may reasonably presume that it hath made deep Impression in the Minds of many worthy Persons, who were not over-inclined to entertain a Prejudice against me, and who, by my withdrawing, may reasonably believe, that if I were in truth so innocent as I have professed myself to be, I would not have declined the most severe and strictest Examination of all my Actions, of which I ought to be very ambitious; and that an exact Inquisition might be made into my whole Life, from which, and from which only, if I am so innocent as I pretend to be, I might reasonably promise to myself such a full Vindication, as might amply repair me in point of Integrity and Honour, not only to the Shame of my Enemies, but to my full Reparation for the Damages I have sustained, if I could prove such a gross Combination and Conspiracy against me as I have seemed to accuse them of: And therefore it concerns me very much to make such a Defence for myself in a clear Relation of all the Motives and Circumstances



stances which prevailed with me at that time to withdraw myself, after I had so often rejected all Overtures and Advice to that Purpose, and so publickly declared that I would rather undergo all the Danger and Ruin which might attend my being brought to a Trial, than to contribute to my own Infamy by endeavouring to decline the Trial: And I hope that when I have made a faithful Narration of all those Reasons and Motives which obliged and even forced me to do what I did, I shall be thought by all dispassionate Men not only not to have deserted and betrayed my own Innocence, but to have complied with that Obligation and Duty which I have always paid to his Majesty, and to his Service; and against which I hope, and am most confident, that God Almighty will always preserve me from committing the least Fault or Omission.

When his Majesty was pleased first to send me an Intimation of his Purpose to take the Seal from me, which was by the Duke of York, he vouchsafed to use all the gracious Expressions that can be imagined; the great Satisfaction and Benefit he had received by my Service, the Assurance he had of my Fidelity, and that he was confident nothing could be objected against me, which I would not be well able to answer; but that the Parliament had contracted so great a Prejudice against me, that if they had sat but one Day longer before their last Adjournment, they would have accused me of High Treason, and that he was most assured that they continued in that Resolution, and would execute it the first Day of their next Meeting; that I well knew the Condition of his Affairs, and how much he depended upon the House of Commons for a Supply of Money, without which he should not be able to support his Government: His Advice therefore was, that I should deliver up the Seal to him out of my own Choice, by which he should be able to protect me from further Inconvenience; and it would be so grateful to the Parliament, that he should in Consideration thereof receive all that he could desire from them. It will easily be believed that I was enough surprised with this Message, it being at a Time when my Mind was broken with the Loss of my Wife; for which his Majesty had vouchsafed in his Royal Person to condole with me very few Days before, and when my Condition in all Respects was in no degree pleasant to me: I desired the Duke that he would procure an Audience for me with his Majesty; which his Royal Highness had not the least Doubt of obtaining, and made as little Doubt but that his Majesty, in respect of my Lameness and Indisposition, would be graciously pleased to come to my House: which his Majesty the next Day promised to do; but upon Conference with others, afterwards changed that his gracious Purpose, and appointed me to attend him in a Morning in my own Chamber at *Whitehall*, which being a Ground-Room, would not put me to the Trouble of going up Stairs; and thither his Majesty did vouchsafe to come to me, there being no body then present but his Majesty and the Duke. The King received me very graciously, with all those Expressions which he had used to the Duke; and when I asked him whether he had taken any Offence at my Carriage, and whether I had misbehaved myself in his Ser-

vice? He said, No, but the contrary; that I had served him very well, and that he believed no Prince had a better Servant; and that the Resolution he had now taken was for my Good and Preservation; and so enlarged himself upon the Resolution the House of Commons had taken to accuse me of High Treason, and the Prejudice they had against me. I told him, that he might possibly be deceived in that Information; and that if he examined it better, he would find that I was not a Man so universally odious to any Persons of Power and Interest to serve him; at least, that my Lord *Arlington* and Sir *William Coventry*, who were my known Enemies, would not be found to be more popular than myself; that the Manifestation of his Displeasure in this manner would be so far from preserving me, that it would infallibly expose me to the Malice of my Enemies, and was upon the Matter to call for Accusations against me to gratify his Majesty; and I told him then, as I had done before, that Sir *William Coventry* had taken upon him, upon the Day of the last Prorogation, to offer some leading Men of the House of Commons, that the Chancellor should be sacrificed to them, if that would content them. His Majesty told me, that he knew much more of the Combination that was against me than I did; and that he was most assured, that if I were not removed before the Parliament met, it would not be in his Power to preserve me; but if I voluntarily gave up the Place, and withdrew into the Country, he would undertake I should not receive the least further Trouble. I told him, the Seal was in his own Disposal, he might take it when he pleased; but that I would not bring the Reproach upon myself, by voluntarily giving it up, that I deserted his Service at a Time when some Men would believe that I might be of some Use to him. His Majesty seemed to be resolved upon the Matter, but dismissed me with many gracious Expressions of his good Opinion; which he continued long after to do to those Persons, who of themselves taking Notice of this Discourse in the Court, presumed to speak to his Majesty, and to dissuade him from proceeding in that manner towards me; as the Archbishop of *Canterbury*, the Lord General, the Earl of *Bridgewater*, and others; to all whom his Majesty mentioned me as a Person of whose Affection and Integrity to his Service he had an unquestionable Assurance: And I do in truth believe, that his Majesty at that time had been persuaded to believe that my Removal was necessary for his Service, and had in himself no Displeasure towards me, in order to any further Prosecution.

As soon as the Seal was taken from me and delivered to the King, I heard that Mr. *May* had kissed the King's Hand, and told him he was then King of *England*, and never before; and then every Day my Enemies declared their Animosities against me; and Sir *William Coventry* declared publickly in all Places, that he had advised the King to remove me, as a Thing upon which his Welfare depended: My Lord *Arlington* had persuaded the Duke of *Buckingham*, that I had been the sole Person who had contrived the Prosecution that had been lately against him; whereas, in truth, I had never heard any thing of it till the King told it me, and the Lord *Arlington* brought me the Examinations which had been

been taken, and assured me there would be much more proved against him; upon which I gave such Advice as my Duty obliged me to do: but so far was I from Malice towards the Duke, that I did him all the Offices I could with the King, and contributed at least as much as any Man, as soon as I found by the Lord *Arlington* that some of the Witnesses were dead, and that the Proofs would not make all that good which he had pretended; but the Duke of *Buckingham* was informed that I was the only Cause of his Suffering, and thereupon inveighed against me with his usual Bitterness.

As soon as the Parliament came together, it quickly appeared that my Enemies had so far prevailed with his Majesty as to declare his own Displeasure against me, and against all those who appeared to have no ill Opinion of me; and then nothing was spoken so much of as the Resolution to take my Life; and the Lady *Castlemain* declared that the Duke of *Buckingham* was to sit Lord High Steward of *England* upon my trial, many Wagers being laid in the Court that I should lose my Head; and Sir *Thomas Osborn*, a Person of great Intimacy with the Duke of *Buckingham*, had declared in the Country, before his coming up to the Parliament, that if the Chancellor were not hanged, he would be hanged himself. All which unusual Proceedings did not in the least degree terrify me; only the Manifestation of the King's so great Displeasure against me (for what Cause God of Heaven knows, I cannot to this Day imagine) did afflict me as it ought to do: Upon which I writ to the King, beseeching him not to give Ear to the Reports raised by my Enemies; but to let me know in what I had offended him, and to beseech him to be satisfied with the Disgrace and Damage I had already received.

From the Beginning of the Prosecution in Parliament against me, some Persons who wished me very well, and were well informed of the severe Intentions against me, earnestly advised me to withdraw myself, and thereby to provide for my Security; which I utterly refused to do. And it is well known, that the Day when the House of Commons sent up their General Impeachment of High Treason against me, that my Coach was ready and waited three or four Hours to carry me to the House, I expecting to be sent for till the Rising of the House. When the Debate grew so hot in the House of Peers, and that after many Expostulations from the House of Commons, the House of Lords still refused to commit me to Prison, I received new Importunities from my Friends to make my Escape; and they were persuaded by some who had had the greatest Hand in contriving my Ruin, to believe that it would be grateful to the King, and that there should be no Means used to obstruct my going away: And when nothing of this could work upon me, the Bishop of *Hereford* (who had not carried himself so well towards me as some Men thought I had deserved from him) first sent to the Bishop of *Winchester*, to persuade him to get me out of the Kingdom; and confessed to him, that it was the King's Desire, though he would not own it to any body else: and then came to me himself, pressing the same thing to me; and undertook, upon his Salvation (which was his own Expression) that I should neither be

stopped in my Passage, nor suffer in the least Degree in my Honour or my Fortune by my Absence; which he said I could not believe he would undertake without very good Authority; and thereupon enlarged upon the Calamities the Kingdom must suffer by this Difference between the two Houses, of which I should be looked upon to be the sole Cause, and therefore had Reason to apprehend what Sense the People were like to have of it; and Mr. *Seymour* had the Confidence to tell a Noble Lord of the House, who had vigorously opposed my Commitment, that if the House of Peers did not comply with the House of Commons, the People would not only pull down my House, but the Houses of all those Lords who adhered to me. I told the Bishop, I was very innocent in all Things laid to my Charge, and therefore I was not to be terrified by any Threats; however, if it were thought fit for his Majesty's Service that I absented myself, I would, without any Consideration how far I might suffer in Point of Reputation, submit to his Majesty's Direction; only I desired that I might have such a Pass as might secure me from being stopped, and exposed as a Spectacle to the People, and as a Man running away from Justice; which the Bishop thought I might reasonably require, and made no Doubt of sending it me accordingly: But the next Morning he told the Bishop of *Winchester*, that if the King should grant such a Pass, it might give great Offence to the Parliament, which Hazard his Majesty would not run, but renewed all the Assurances he had before given for the Security of my Passage: and I as positively refused to accept thereof; and so continued in my House, and spoke every Day publicly with many Persons a full Week after the Time that the Bishop had been with me, notwithstanding the daily Advice and Importunity I received from my Friends and nearest Relations to withdraw.

It pleased God that the Duke of *York* had been for some Weeks sick of the Small-Pox, so that no body had spoken with him of any Business for the Space of near a Month; but the Malignity of the Disease being spent, his Majesty himself had, upon the last *Friday* in *November*, visited his Royal Highness; and saying little more then, than in congratulating his Recovery, and expressing his own great Joy in it, he came again to him the next Morning early, and had some private Conference with him. And the King no sooner departed from him, but the Duke bid his Wife send presently to me, and conjure me presently to be gone; that she should let me know that it was absolutely necessary for the King's Service; and that I might be very confident and secure, that I should meet with no Obstruction in the Way, nor undergo the least Damage in my Honour or Fortune by being gone. And upon this Authority and Command I did the same Night, on *Saturday* the last of *November*, One thousand six hundred sixty and seven, leave my own House, and went by Coach to *Erif*, where I embarked; and it pleased God, after four Days struggling with ill Wind and Weather, I arrived at *Calais* the *Wednesday* following. And I did no more in this Adventure, whatever Prejudice I have undergone by it, than I shall always do, in sacrificing my Honour, and my Life itself, upon the least Intimation of his Majesty's



Majesty's Pleasure, and whenever he thinks his Service may be advanced by it. And if any Man shall yet think, notwithstanding all that I have said, that I ought not to have withdrawn myself, but to have remained there in Prison, or any other Condition they would have put me in, until I had been fully clear'd upon a fair Trial; he will, I hope, have so much Compassion of me, as to think I had great Difficulties to contend with,

and will lament, on my Behalf, that I am forced to undergo so hard a Fate, after the Age of Threescore Years, whereof Thirty have been spent in the Service of the Crown; and for the Prosperity whereof, and the Happiness of his Majesty's Royal Person, my daily Prayers shall be pour'd out, in what Condition soever I am in, and in what Corner of the World soever I shall be confined or condemn'd to.

## NUMBER XII.

*The Proceedings before the Lords of the Articles, &c. against Charles Maitland, of Halton, Treasurer Depute, for Perjury, in having given a false Testimony, at the Trial of James Mitchel. \**

**A** PARLIAMENT being summon'd and holden at *Edinburgh* the 28th Day of *July*, 1681, by His Royal Highness, the King's High Commissioner, on the — Day of — *William Noble*, of *Denotter*, did deliver the following Petition, or Accusation, into the Hands of the Lord Register, to be by his Lordship presented to his Royal Highness, and the Lords of the Articles.

*To his Royal Highness, his Majesty's High Commissioner, and the Right Honourable the Lords of the Articles,*

*It is humbly represented,*

**T**HAT, Whereas the deceased Mr. *James Mitchel* being convened before the Justices, for attempting to assassinate the late Archbishop of *St. Andrews*, and his Confession before the Duke of *Lauderdale*, his Majesty's Commissioner for the time, and the Lords of the Privy Council, being adduced in *modum Probationis*, against him, the said Mr. *James* proposed this Defence, that his Confession was emitted upon Promise and Assurance of Life made to him, for proving whereof, he did adduce *Charles Maitland*, Lord Treasurer Depute, as a Witness, who deposed negative, notwithstanding that by Letters under his Hand, directed to the late Earl of *Kincardin*, he expressly writes, *That the said Mr. James had confessed upon Assurance made to him of his Life. And that he now thought that his Punishment would be the Loss of his right Hand*, which Perjury will be clearly proven by Production of the said Letters and Deposition; for which is humbly craved, a Warrant may be granted against the Havers for Exhibition of the same, and that the Lord Treasurer Depute may be declared infamous, and suffer the other Pains appointed by Law in such Cases.

*Sic Subscribitur,*

W. NOBLE.

The Letters which the Petition refers to, and upon which the whole Accusation is founded, are these two that follow, both sent to my Lord of *Kincardin*.

*Holyrood-House, 10 Feb. 1674.*

**T**HIS Afternoon your's came, which should have come this Morning, so that the Post is now more regular.

" I read it all, and it is a full Account of all Passages: I hope shortly we may find Matters grow better, and indeed there is great Need of it here, for at present we are out of Joint. Saturday last, in the Morning, Information was given, That one Mr. *James Mitchel*, who was alledged to have shot at the Archbishop of *St. Andrews*, was discover'd by — and Sir *William Sharp*, and being seen to come down Sir *William's* own Close, by Sir *William*, and two of his Brother's Footmen, he call'd to *Mitchel*, and carried him back to his House, (the Signet-Office.) He had a long Iron Pistol, and a short Sword about him, in Shoes and Stockings; and though he was so armed, yet he did not resist, though none came up to him, but Sir *William* alone, till he came up his Stair. Being ask'd his Name, he denied it, and varied in several others of his Answers; and by Warrant of the Chancellor, was committed close Prisoner. This Day he was examin'd by Order of Council, by the Chancellor, Register, Advocate, and me: The Commissioner had order'd us to charge him with his being in the Rebellion, and that he was excepted by Name out of the Act of Indemnity, and so let him see his Condition, to be led to Execution: This was done very soon, and against his next Examination he confess'd his being with the Rebels, but deny'd this Assassination of the Archbishop, yet acknowledged his being in Town at that Time, and that the Pistol he was taken with he had bought at that Time; so it was moved by one, That the Chancellor might take him apart, to see what he would then say:

\* This should be read after *Mitchel's* Trial, Vol. 2. Pag. 636.

" This

“ This being done, upon Assurance of Life, he  
 “ fell upon his Knees, and confessed it was he  
 “ that shot the Bishop of *Orkney*, and which he  
 “ aimed at the Archbishop; and here is his Con-  
 “ fession, the Double of it signed by him, the  
 “ Chancellor, and us. His Punishment, it is  
 “ thought, will be the Loss of his Right Hand,  
 “ and condemned to perpetual Imprisonment in  
 “ the Bafs. I think I told you before, that his  
 “ Grace had retrenched his Allowance, to ten  
 “ Pounds Sterling a Day, since the 20th; tho’  
 “ his Charge be little retrenched, for his Table  
 “ holds yet 24 Persons. I hope, when Matters  
 “ are over, you will give us some Account of  
 “ his Majesty’s Pleasure about the Miners Affairs,  
 “ wherewith ye know their Friends have been  
 “ sufficiently reproached, without any Shadow of  
 “ Reason. And so, my Good Lord, Adieu.

*Holyrood-House, 12 Feb. 1674.*

“ **T** HIS Day, Mr. *Mitchel*, who assassinated  
 “ the Archbishop of *St. Andrews*, was again  
 “ examined in Face of the Council, and said no-  
 “ thing but what he said to us of the Committee:  
 “ He is remitted to the Justice Court, to receive  
 “ his Indictments, and Sentence, to have his  
 “ Right Hand cut off at the Crofs of *Edinburgh*,  
 “ and the Forfeiture of his whole Goods and  
 “ Posterity. This last Part is not to be put in  
 “ Execution till his Majesty be acquainted, be-  
 “ cause Assurance of his Life was given him upon  
 “ his Confession. The cutting off his Hand is  
 “ to be executed by the Hand of the Hangman.

The Deposition which is pretended to be con-  
 tradictory to what is delivered here in these two  
 Letters, from whence Perjury is inferred, is in  
 Vol. 2. Pag. 634.

This Petition being read, the Lord Treasurer  
 Depute desired that he might have it delivered  
 to him in common Form, and might have Lib-  
 erty to put in his Answer to it; and became fur-  
 ther an humble and earnest Suitor to their Lord-  
 ships, that he might be put to a speedy Trial,  
 whereby he might make his Innocence appear to  
 the Parliament, and the whole World, which his  
 Royal Highness, and the Lords of the Articles,  
 were pleased to grant; not because they found  
 any thing in the Accusation relevant against him,  
 but that they might gratify his Lordship’s earnest  
 Desire, of being put upon his Trial. Afterwards,  
*William Noble* was called in, who owned his Ac-  
 cusation, and did again sign it in Presence of his  
 Royal Highness, and Lords of the Articles, and  
 being asked by the President of Parliament, the  
 Marquis of *Aiboll*, if he knew the Lord Treas-  
 urer Depute, or was acquainted with him, he  
 answered, No: Being then interrogated how he  
 came to accuse his Lordship upon the Head of  
 Perjury? or whether it did fall within his proper  
 Knowledge? or whether he did ever see the  
 Lord Treasurer Depute’s Letters, or Deposition?  
 he replied, No; but that he was so informed,  
 and that he was induced to do it as a Member of  
 Parliament: And being thereupon asked, who he  
 received his Information from, he refused to make  
 any Reply to that Question.

Presently after this, the Lord *Halton* put in his  
 Answer to the Information exhibited against him,  
 which is as followeth.

VOL. VIII.

“ **W** HEREAS it is represented, That  
 “ Mr. *James Mitchel*, in his Trial, hav-  
 “ ing alledged that his Confession was emitted  
 “ upon Assurance of Life, and having adduced  
 “ the Treasurer Depute as a Witness in his Ex-  
 “ culpation for proving the same, he deposed  
 “ Negative, notwithstanding, by a Letter under  
 “ his Hand to the Earl of *Kincardin*, he asserts,  
 “ that he had confessed upon Assurance of Life;  
 “ which he offers to prove by the Missive Letter  
 “ now produced, and therefore concludes, that  
 “ the Treasurer Depute is guilty of Perjury, and  
 “ ought to be declared infamous, and subjected  
 “ to other legal Penalties there anent.

“ It’s answered, that this Accusation is neither  
 “ relevant nor proven, for as to the Relevancy,  
 “ Perjury being a high Crime, is not to be pre-  
 “ sumed against any Man, much less a Person of  
 “ so high Quality and Office, except the Deeds  
 “ inferring the Perjury were of Knowledge, and  
 “ directly contradictory; and to infer Perjury  
 “ must not only be Deposition, contradicting  
 “ another Deposition which is upon the Matter  
 “ false, because a Man may depone an Error,  
 “ *bona fide*, through Forgetfulness; but Perjury  
 “ must be a false Deposition against one’s Know-  
 “ ledge; and so he must be *Sciens & volens*. So  
 “ that two Oaths, after the Interval of four  
 “ Years (which is the Distance between the  
 “ Letter and Deposition) suppose they had con-  
 “ tradicted, yet, in Charity, a Person of entire  
 “ Fame might be excused from Perjury; but  
 “ where the Contradiction is only alledged, be-  
 “ twixt a transient Missive Letter of News, and  
 “ an Oath emitted four Years after the Date of  
 “ the Letter, no rational Man can think, that  
 “ albeit these did contradict, it could infer Per-  
 “ jury, but only an Error or Mistake in the Mis-  
 “ sive Letter, and the writing of a Missive upon  
 “ Mistake or Design, though it were produced  
 “ to a Party, when he is called to depone; if he  
 “ were convinced that he had been mistaken in  
 “ his Missive, he behoved to depone according  
 “ to his Knowledge, and the Truth, though  
 “ that contradicted his Letter, which can never  
 “ infer the least Insinuation of Perjury, suppose  
 “ the Letter had been obligatory and serious;  
 “ whereas this Letter was only an overly indi-  
 “ gested Account of News, and unsubscribed.

“ 2. As the Accusation is no ways relevant,  
 “ so it is not all proven; because both the Let-  
 “ ter and the Oath are consistent, in so far as  
 “ *Mitchel* being examined before a Committee of  
 “ the Council, in the Treasury-Chamber, he did  
 “ deny the Attempt of assassinating the Primate;  
 “ but thereafter, the Chancellor having retired  
 “ with him to the Council-Chamber, after a little  
 “ Time, they did return, and *Mitchel* did con-  
 “ fess the Attempt before the Committee, and  
 “ some Days after, reiterated that Confession be-  
 “ fore the Council; and it was generally re-  
 “ ported, and until the Chancellor deposed the  
 “ contrary, it was universally believed, that the  
 “ Chancellor had given him Assurance of Life  
 “ privately: But it neither is probable that  
 “ Assurance was promised by the Committee or  
 “ Council, nor did Mr. *James Mitchel* assert it  
 “ in his Trial; and therefore the universal Re-  
 “ port, that Assurance was given privately, was  
 “ a sufficient Foundation for the Treasurer De-  
 “ pute’s Letter; but when he came to be ex-  
 “ amined in the Exculpation, whether he heard



“ Assurance given him, suppose he had all the  
 “ Grounds of Credibility, yet he could not de-  
 “ pone that he heard Assurance given, except he  
 “ had been Ear-Witness to the Promise; and by  
 “ this Letter that appears impossible; for it  
 “ bears, That it was moved, that the Chancellor  
 “ and *Mitchel* should retire, and this being done,  
 “ upon Assurance he confess’d; so that the As-  
 “ surance related in the Letter, was not given in  
 “ the Committee, or where the Treasurer Depute  
 “ was present, but where the Chancellor had re-  
 “ tired with *Mitchel* in the Council-Chamber:  
 “ And the Treasurer Depute is so cautious in his  
 “ Deposition, that he restricts it to two precise  
 “ Times, viz. when *Mitchel* confess’d in the  
 “ Committee, and when he renew’d his Confessi-  
 “ on before the Council; and he depones, That  
 “ being present at these two Times, he heard  
 “ neither Assurance ask’d nor offer’d; so that al-  
 “ beit, at any other Time, Assurance had been  
 “ given him, it doth not at all contradict the  
 “ Oath: And it had been Perjury, if the Treas-  
 “ urer Depute had deponed Affirmative, though  
 “ he had heard the general Surmise, or though  
 “ this Letter, written upon the Faith of that  
 “ Report or Rumour, had been in his Hand.  
 “ And in this Case, the Treasurer Depute’s De-  
 “ position being a concurring Testimony with  
 “ several other Persons of the greatest Eminency,  
 “ Trust, and Integrity, in this Kingdom, some  
 “ whereof deponed in relation to their proper  
 “ Fact, and who were only pretended to have  
 “ given the Assurance, his Oath can never be  
 “ suspected, without the greatest Reflection up-  
 “ on the considerablest Part of the King’s Prin-  
 “ cipal Ministers.

“ From all which, it is evident that this Ac-  
 “ cusation is a most unjust, calumnious, and scan-  
 “ dalous Libel, to which the Accuser hath been  
 “ hounded out, tending to diminish the Confi-  
 “ dence of the Lieges and Subjects to his Maje-  
 “ sty’s Officers of State, and thereby wounding  
 “ his Majesty’s Authority, and weakning his Go-  
 “ vernment by such presumptuous Attempts  
 “ against his Ministers: And it is humbly hoped  
 “ and expected from his Royal Highness, and  
 “ the Lords of the Articles, that since the Let-  
 “ ter founded upon doth not, in the least, instruct  
 “ the irrelevant and illegal Accusation, which is  
 “ only probable by Writ, according to our Law;  
 “ That therefore the Treasurer Depute may be  
 “ vindicated and absolved from this false and in-  
 “ famous Libel; and that the Calumniator may  
 “ be punish’d, by being declared infamous, and  
 “ otherwise in his Person and Goods, according  
 “ to the Demerit of his Crime, and to the Ter-  
 “ ror of others.”

This Answer being given in by my Lord *Hal-  
 ton*, it was so full and clear, that unless some  
 other Trick were found out, the Lords of the  
 Articles could not but immediately proceed to  
 give their Judgment in favour of his Lordship;  
 Mr. *Noble*, therefore, who had before restrain’d  
 his Proof of the Accusation to those two Letters  
 written to my Lord of *Kincardin*, and to which  
 the Answer refer’d, that he might buoy up his  
 sinking Cause as long as he could, was pleas’d  
 (by a second Petition) to desire that Witnesses  
 might be summon’d in, and the Registers of the  
 Council and Justice Court produced to prove the  
 Contents of his Accusation; and the Treasurer

Depute still pressing for a fair Trial, the Articles,  
 before they would give Answer, allowed him to  
 condescend upon all the Sederunts of Council,  
 and all the Members of Council at that Time,  
 when *Mitchel* was examin’d at several Diets, and  
 craving further, several other Witnesses to be  
 examin’d, and the said Registers to be produced.  
 This being again consider’d by the Articles, the  
 Treasurer Depute begg’d Leave to answer for  
 himself, and for his Defence said;

“ 1. That in Law, no Man’s Letter can inva-  
 “ lidate his Oath, even though it contradict his  
 “ Oath, but that his Letters are consistent with  
 “ his Oath, being diversly related, and to divers  
 “ Times and Circumstances.

“ 2. That *Noble*’s Accusation having restricted  
 “ the Manner of Proof to *Halton*’s Letters only,  
 “ he could not now refuse from that, without  
 “ giving in a new formal Accusation against him:  
 “ And though the Sense of his own Innocence  
 “ had induced him to press a legal Trial, yet  
 “ he could not consent to suffer his Accuser to  
 “ shift himself off, by proposing new and illegal  
 “ Methods of Probation, to procure Delay.

“ 3. That the Crime of Perjury could not be  
 “ infer’d but by contradictory Oaths, which could  
 “ not be alledged against him in this Case.

“ 4. That the Crime of Perjury, by the Law  
 “ of *Scotland*, was not probable, nor could be  
 “ proven by Witnesses, but by Writ only, and  
 “ that especially by Oaths contradicting one ano-  
 “ ther.

“ 5. That in this Case, his Oath did conclude  
 “ that he did not hear *Mitchel* ask Assurance of  
 “ Life, or any Person give it him, and that there-  
 “ fore no Witness could swear, that *Halton* heard  
 “ the Assurance given to *Mitchel*, unless his Ears  
 “ had been fix’d in that Witness’s Brain, which  
 “ is impossible, and unless they swore so, it would  
 “ not prove this, or any Crime against him;  
 “ and though it were possible to prove he heard  
 “ Assurance given, yet, after so long Time, he  
 “ might have forgot.

“ 6. The Treasurer Depute was a concurring  
 “ Witness with the late Chancellor, the late  
 “ murdered Archbishop of *St. Andrews*, the  
 “ Duke of *Lauderdale*, and the now Bishop of  
 “ *Edinburgh*; and though Witnesses were allow-  
 “ able in this Case, as they were not, yet they  
 “ cannot be led against these Persons deponing  
 “ with him in *Mitchel*’s Trial, who are either  
 “ dead or absent: Besides, that what they might  
 “ be presumed to swear, be what it will, would  
 “ rather rake into the Graves and Ashes of those  
 “ noble Persons, now dead, than militate any  
 “ thing against the Treasurer Depute.

“ 7. As to any Register craved to be produced,  
 “ that can operate nothing, unless they contain  
 “ Papers sign’d by the Treasurer Depute, and  
 “ must be Oaths contradictory, and which ought  
 “ particularly to be condescended upon, and are  
 “ not so much as alledged; and if they were,  
 “ Mr. *Noble* may get Extracts, as other Subjects  
 “ do. But however, he submitted himself to  
 “ his Royal Highness, and their Lordships De-  
 “ termination.”

Upon this his Royal Highness, and the Lords  
 of the Articles, having fully consider’d the Ac-  
 cusation, and the Letter, upon which it is found-  
 ed, and also the Lord Treasurer Depute’s An-  
 swers, and his Deposition, concurring with the  
 Depositions

Depositions of the Lord Chancellor, Archbishop of St. Andrews, and Duke of Lauderdale, His Royal Highness was pleased to say in the Articles, that he did not see how he, being the King's Commissioner, could give Way to any such Accusation against one of his Majesty's Servants and Officers of State, or that any such Matter should come to a Trial, unless it had been the Treasurer Depute's own earnest Desire: And that now their Lordships having seen and considered the whole Matter, it was fit for them to consider what was to be done. Whereupon, the Lords of the Articles declared their Sense of the Treasurer Depute's Innocence in this Crime of which he was accused; and they did humbly offer to his Royal Highness, that he would be pleased to transmit the whole Affair to his Majesty, and submit the same to his Royal Consideration; to the End his Majesty might declare his Royal Pleasure, both for the Treasurer Depute's Vindication, and punishing the Accuser according to the Pains usually by Law inflicted in such Cases.

What follows is the Copy of *Mitchel's* two Confessions.

Edinburgh, 10 Febr. 1674.

In the Presence of the Lord Chancellor, the Lords Register, Advocate, and Treasurer Depute.

**M**R. James Mitchel being call'd before the Committee, and examin'd as to his Accession to the Rebellion in the Year 1666, acknowledges he was in that Rebellion, and join'd with them at the Burgh of Air, and stay'd with them until the Night before Pentland, at which Time, at the Desire of Captain Arnot, he came into Edinburgh, to speak with one Mr. James Sterline, and Mr. Robert Ferguson, and the Laird of Penzerie, who were then in Edinburgh, anent an Address to be given in to the Council, in Behalf of those in the Rebellion, declares he was in Edinburgh, and stay'd

in the House of Griffel Whytford, in the Cannon-Gate, before he went out; and having Notice from Col. James Wallace, Capt. Arnot, John Lindsay, and one Willam Young, from whom he brought a Horse, went out of Edinburgh, about Eight o'Clock at Night, and immediately rode towards Air, and join'd with those that were there in the Rebellion. Declares, that it was in the House of one Widow Robison in Currie's Close, that he spoke with Penzerie.

Sic Subscribitur,  
James Mitchel.

Rotbes.  
A. Primrose.  
Jos. Nisbet.

Edinburgh, 10 Feb. 1674.

**I**N Presence of the Lord Chancellor, Lords Register, Advocate, and Treasurer Depute, Mr. James Mitchel, Prisoner, being call'd, did freely confess he was the Person who shot the Pistol at the Archbishop of St. Andrews, when the Bishop of Orkney was hurt thereby, in the Year 1668. And depones upon Oath, That no living Creature did persuade him to it, or was upon the Knowledge of it.

Sic Subscribitur,  
James Mitchel.

Rotbes.  
A. Primrose.  
Jos. Nisbet.  
Cb. Maitland.

It is certain, that Mr. Noble had, by the Advice of his own Friends, without the Knowledge of my Lord Halton, subscribed a Paper, wherein he renounced and retracted his Accusation, and that he had shewn the same to John Campbell, of Succob, Commissioner for Argyleshire, after it was subscribed by him before Witnesses. He, at first, was pleased to think fit to deny it, but being immediately confronted with the said Mr. Campbell before the Articles, he then confessed he had shewn that Paper subscribed by him to that Gentleman; by which a Man may easily conjecture at the Nature of both his Accusation and Accuser,



## N U M B E R XIII.

*An Account of the digging up of the Quarters of William Stayley, lately executed for High Treason, for that his Relations abused the King's Mercy.\**

**W**H E R E A S William Stayley, being found Guilty of High Treason, at the King's Bench Bar, on Thursday the 21st Day of November, 1678, received then his Sentence, to be drawn on a Sledge to the Place of Execution, there to be hang'd by the Neck, cut down alive, his Quarters to be sever'd, and disposed of as the King should think fit, and his Bowels burnt; which Sentence, on Tuesday next following, was accordingly executed at the common Place of Execution, and his Quarters were

brought back, and left at Newgate, in order to their being set up on the Gates of the City of London, and his Head on London Bridge, as Traitors Quarters usually are. But the said William Stayley having behaved himself very penitently, from the Time of his Conviction until the Time of his Execution, which was attested by the several Ministers that visited him during that Time: And the Relations of the said William Stayley humbly petitioning his Most Sacred Majesty, that he would be graciously pleased, that his

\* To be read after his Trial in Vol. 2. Pag. 656.



Quarters might be delivered back to them, to be privately buried, and not to be set up on the Gates of the City: Which his Most Sacred Majesty, out of his Princely Clemency and Compassion, was pleased to grant, and ordered the Sheriff of the County of *Middlesex* to deliver the Quarters to his Friends, by them to be disposed of as aforesaid; which were delivered accordingly. But since that, (to the great Indignity and Affront of his Majesty's Mercy and Favour) the Friends of the said *Stayley* caused several Masses to be said over his Quarters, and used other Ceremonies, according to the Manner of the Church of *Rome*, and appointed a Time for his Interment, viz. *Friday* the 29th of *November*, 1678, in the Evening, from his Father's House in *Covent-Garden*, at which Time there was made a pompous and great Funeral, many People fol-

lowing the Corpse to the Church of *Saint Paul's, Covent-Garden*, where he was buried; which his Majesty hearing of was justly displeased, and commanded the Coroner of the Liberty of *Westminster* to take up the Body of the said *William Stayley*, and deliver it to the Sheriff of the County of *Middlesex*, and that the said Sheriff should cause the Quarters to be set up on the Gates of the City of *London*, and his Head on *London-Bridge*. The Coroner, according to his Majesty's Command, did immediately go to the Churchwardens of *Saint Paul's, Covent-Garden*, and caused the Body of the said *William Stayley* to be taken up, and the Coffin to be broken open, to see that he had the right Body, which when he had done, he caused the Body to be carried to *Newgate*, and there delivered it to the Sheriff of *Middlesex*, to be disposed of as aforesaid.

*Imprimatur November 30, 1678.*

*William Scroggs.*



## NUMBER XIV.

*Mr. Ireland, and Mr. Groves were carried on the 24th of January, 1678-9, to Tyburn, where Mr. Ireland made this following Speech. \**

**W**E are come hither, as on the last Theatre of the World, and do therefore conceive we are obliged to speak.

First then, we do confess, that we pardon all and every one whatsoever, that have any Interest, Concern, or Hand in our Death.

Secondly, we do publicly profess and acknowledge, that we are here obliged, if we were guilty ourselves of any Treason, to declare it; and that, if we knew any Person faulty therein, (although he were our Father) we would detect and discover him; and as for ourselves, we would beg a Thousand and a Thousand Pardons, both of God and Man: But seeing we cannot be believed, we must beg Leave to commit ourselves to the Mercy of Almighty God, and hope to find Pardon of him through Christ.

As for my own Part, having been twenty Years in the Low-Countries, and then coming over in June was Twelvemonth, I had return'd again, had not I been hinder'd by a Fit of Sickness. On the third of August last I took a Journey into Staffordshire, and did not come back to Town before the fourteenth of September, as many can witness; for a Hundred, and more, saw me in Staffordshire; therefore, how I should in this Time be acting here Treasonable Stratagems, I do not well know or understand.

Here Mr. Sheriff advertised the Prisoner, he would do well to make better Use of his Time, than to spend it in such like Expressions, for no Body would believe him; not that they thought much of their Time, for they would stay; but

such kind of Words did arraign the Proceedings of the Court, by which they were tried.

Wherefore Mr. Ireland concluded, and said; I do here beg of God Almighty to shower down a Thousand and a Thousand Blessings upon his Majesty, on her Sacred Majesty, on the Duke of York, and all the Royal Family, and also on the whole Kingdom. As for those Catholics that are here, we desire their Prayers for a happy Passage into a better World, and that he would be merciful to all Christian Souls. And as for all our Enemies, we earnestly desire that God would pardon them again and again, for we pardon them heartily, from the Bottom of our Hearts; and so I beseech all good People to pray for us and with us.

Then Mr. Groves said;

We are innocent; we lose our Lives wrongfully; we pray God to forgive them that are the Causers of it.

Pickering was reprieved till the Ninth of May, 1679, at which Time he was also executed. Arriving at the Place of Execution, he appear'd to the Spectators (after a Manner very unusual to Persons in his Condition) with a Countenance not only calm, sweet, and serene, but even cheerful, smiling, and pleased; solemnly protesting upon his Salvation, He was innocent in Thought, Word, and Deed, of all that was laid to his Charge. Then heartily praying for his Accusers and Enemies, he said to the Hangman, Friend, do thy Office; and soon after, quietly left the World.

\* To be read after their Sentence, in Vol. 2. Pag. 720.

N U M B E R X V.

*An Account of (together with) the Writing itself, that was found in the Pocket of Lawrence Hill, at the Time he and Green were executed (Friday the 21<sup>st</sup> of February, 1678-9,) for the Murder of Sir Edmundbury Godfrey, Kt. \**

**T**IS very fit the World should have some Account of what was said at the Execution of these Men, and how they came to say what they did.

Their Confession (as 'tis call'd) was a Denial of the Fact, which was penn'd and prepared in a very formal Manner, and taken out of the Pocket of *Hill*, who had neither Pen, Ink, nor Paper, all the while he was in *Newgate*; yet, after he was dead, Captain *Richardson*, the Master of *Newgate*, saw the Executioner take it out of his Pocket; which is *Verbatim*, as follows.

**I**NOW come to the fatal Place where I must end my Life, and I hope with that Courage that may become my Innocence: I must now appear before the Great Judge, who knows all Things, and judges rightly; and I hope it will be happy for me a Sinner, that I am thus wrongfully put to Death. I call God, Angels, and Men, to witness, that I am wholly ignorant of the Manner, Cause, or Time of the Death of Justice *Godfrey*; although, on that Account, by the Malice of wicked Men, brought to this shameful Death, which, I hope, will give me a speedy Passage to eternal Life: In this Hope I die chearfully, because of my Innocence, and the Benefit of the precious Wounds of my blessed Saviour, by whose Merits I hope for Salvation. I die a *Roman Catholick*, desiring all such to pray for me: And I beseech God, in his Justice, to discover this horrid Murder, with the Contrivers thereof, that my Innocence may appear. And though from my Heart I forgive my Accusers, yet I cite all such as have had a Hand in this bloody Contrivance, before the great Tribunal of God's Justice, to answer for the Wrong they have done the Innocent; and particularly the Lord Chief Justice, and the Brothers of Sir *Edmund*

*Godfrey*, with Jury, Witnesses, and all their Partakers. O Lord, bless and preserve his Majesty, and be merciful to this poor Nation, and lay not innocent Blood to its Charge. So I bid you all Farewel in Jesus Christ, into whose Hands I commend my Spirit.

Then turning to some of the Officers, he said; There is a Report up and down, that I have confess'd the Murder of Sir *Edmundbury Godfrey* to Dr. *Lloyd*; I do deny it.

This Paper was shewn to *Hill's* Wife; and she being demanded whether it was her Husband's Hand-writing, affirm'd it was not: And being further ask'd, whether she convey'd it to him, she protested she knew not how he came by it; and declared that she never saw it before.

*Then Mr. Green said,*

**I** Desire all your Prayers: And as for Sir *Edmundbury Godfrey*, I know not whether he be dead or alive; for in my Days I never saw him with my Eyes, as I know of; and if false People will swear against me, I cannot help it. I pray God to bless my King, and all good People.

Then Captain *Richardson* told him, he had a fair Trial, and wish'd him not to reflect on others, but to prepare himself for Death: To which Mr. *Green* reply'd, I pray God Almighty to forgive them all: I never saw Sir *Edmundbury Godfrey* (to my Knowledge) in my Life.

Mr. *Berry* being a *Protestant* of the Church of *England*, was reprieved till the 28<sup>th</sup> of the same Month, in hopes he would make some Discoveries: Nevertheless, when he came to the Gallows, he absolutely denied all Knowledge or Concurrence in the Fact for which he died; as will be seen by the following Account of his Behaviour.

\* To be read after their Sentence, Vol. 2. Pag. 787.





## NUMBER XVI.

*A Relation of Mr. Berry's Behaviour and Discourse, from Seven o'Clock in the Morning, 'till he was executed. Written so soon as I got home.\**

George Wilfon.

WHEN I came to him in *Newgate*, I found him upon his Knees, at his Prayers, with Dr. *Patrick's* Devotions in his Hands. He told me he was glad I was come, and desired my Assistance in Prayer. After I had for some while pray'd with him, which he did very fervently, I believe, for almost all the Time he wept; we then both rose up together, and had some little Discourse. I told him, that as the Law had condemned him, so I could not but conclude him guilty; and therefore did assure him, that there was a strict Tribunal after this Life, before which we must all appear; and in particular for him, that there were but two or three Hours before he must suffer Death, and come to Judgment; and therefore I did desire him, that he would reveal to me what he knew of the Murder of Sir *Edmund Godfrey*, that God's Justice might be glorified in his Death; and that he would not go out of the World in his Sin unrepented of; which it must be, if he did not abhor it, and confess it. He answer'd me, He knew not any thing of the Fact for which he was condemn'd: This was spoke with some Assavation. I hearing him give this Answer, ask'd him, what were the particular Things that were witness'd against him, for which he was condemn'd? As I did conjecture then, I thought he seem'd to be unwilling to speak of this Matter; nor did his Words seem to come freely from him: But he told me, that Mr. *Prance* † had accused him for assisting in the carrying Sir *Edmund Godfrey*, after he was murder'd, into a Room in *Somerset-House*: He said, He could not

say he had never been in the Room Mr. *Prance* spoke of, for he believed, one Time or other, that he had been in all the Rooms of the House; but that, to the best of his Remembrance, he had never carried, in all his Life, a Two-penny Weight into that Room; but did acknowledge God's Justice in his Death, for changing his Religion for Interest sake. Hearing him thus positively to deny the Fact, considering Dr. *Lloyd* had been with him two or three Days before, I did not further press him, because I came to him only for to assist him in Prayer: And therefore, after this little Discourse, we went to Prayers again, and before we had done, the Ordinary of *Newgate* came in, to whom I gave Place.

He began to tell Mr. *Berry*, that he had found him of a more ingenuous Temper than the rest were; and wonder'd who had been tampering with him, to make him persist in the Denial of the Murder, which if he would have confess'd, there was once Hopes of a Pardon; but if he would at last confess it, he would endeavour what he could to have him saved: And told him also, that it was no Argument, that others had foolishly thrown away their Lives, that therefore he must do so too; therefore, says Mr. Ordinary, come tell me what is Truth. Mr. *Berry* answer'd, *You have been before very pressing upon me; I cannot tell what you mean; (and shew'd his Averseness again to speak of the Murder:)* I mean, says Mr. Ordinary, *that thou wouldst tell me what is Truth; and prithee come tell me what is Truth?* Truth, says Mr. *Berry*, *is not to tell a Lye; not to speak that a Man does not know; and*

\* From a MS. in the Library belonging to the Church of St. Martin's in the Fields. Read this, and the MS. Declaration of Hill, after their Trials, Vol. 2. Pag. 787.

† An ACCOUNT of the proceeding to Sentence against Miles Prance, for Wilful Perjury; who was Sentenced in the Court of King's-Bench, Westminster, upon a Conviction, by his own Confession, on the 15th of June, 1686, in wilfully forswearing himself at the Trials of Robert Green, Lawrence Hill, and Henry Berry, &c. in relation to the Murder of Sir Edmundbury Godfrey.

MILES PRANCE, a Silversmith, having been, the last Easter Term, arraign'd upon an Information of Wilful Perjury, exhibited against him in the Court of King's-Bench, for wilfully forswearing himself against Robert Green, Lawrence Hill, and Henry Berry, &c. in relation to their murdering Sir Edmundbury Godfrey; and for which, upon his Oath, &c. they were executed for the said Murder at Tyburn; and he confessing himself Guilty of the Perjury, specified in the said Information, was, on Tuesday the 15th of this Instant June, again brought to the Court of King's-Bench, to receive his Sentence. The Court having a while consider'd the Heinousness of the Crime, and putting him in Mind of it, told him, It was well he was so sensible of his Offence, it being so great a one, as to extend to the taking away the Lives of innocent Persons, which did aggravate it; though one that had before him been found Guilty of two notorious Perjuries in that Court, continued obstinate to the last; and, for ought appears, has not hitherto shewn any Remorse. Yet seeing he (meaning the Prisoner) was sensible of his Crime, and had confess'd it, the Court had consider'd his Condition, and would have some Compassion on a true Penitent. The Sentence of the Court was, "That he should pay a Fine of One Hundred Pounds to the King: That he should appear before each Court in Westminster-Hall, &c. with a Paper upon his Forehead, expressing his Crime: That on Monday next he should stand at Westminster in the Pillory, between the Hours of Eleven and One, for the Space of an Hour; on Wednesday the like, before the Exchange; and on the following Monday, at Charing-Cross: And he was likewise Sentenced to be Whipp'd from Newgate to Tyburn; and he to continue in Prison 'till all was perform'd."

Prance, upon the aforementioned Exhortation, declared, That his last Confession was the Truth; and that he was very sensible of, and sorry for what he had done; upon which the Court desired God to continue him so.

The Sentence pass'd, the Keeper of the Gatehouse was order'd to take back his Prisoner, which he accordingly did, conveying him to the Gatehouse Prison, where he now, (June 15, 1686,) remains in Custody.

*this is Truth. Well, says Mr. Ordinary, come tell me what thou knowest of the Murder, and do not damn thyself: Says Mr. Berry, But I think you would have me, by your thus pressing of me; for I did not know any thing of it, for a Fortnight after it was done.* Mr. Ordinary then told him, he would deceive himself, if he thought that any Absolution, or any Indulgence, of either Priest or Pope, could save him, without true Repentance: He said, He did not believe any such thing. Mr. Ordinary perceiving that this Discourse did but disorder him, and had put him out of that Composure and Calmness he was in before, gave it over, and went to Prayers, till the Sheriff sent to him, to come away to Execution. When we were coming out of his Prison-Chamber, Mr. Ordinary ask'd him, if he should go along with him to his Execution; Mr. Berry begg'd heartily that he would not, but desired me to go along with him: Mr. Ordinary said, it was his Place, and he would go. We both went, and got into the Cart to him, at the Place of Execution: When he had pray'd by himself a good while, Mr. Ordinary desired him to confess to the People his Crime, which was seconded by others that stood by, saying, There was no Repentance without publick Confession. Mr. Berry being thus press'd again, he declared (otherwise I believe

he would not have said any thing, but have gone out of the World without speaking one Word of his Innocency, or of the Murder; for he seem'd to be, both before and after, when press'd again to confess, to be averse to it,) he was as innocent as the Child that is new born. Presently the Sheriff stopp'd him from saying any thing more, and told him, he was not to suffer him there to defame an honourable Court, but if he had any other Thing to say, he might: He answer'd, he did not blame either Judge or Jury, (and had before at first pray'd, as for the King and Queen, and Church, so for the Magistrates, that God would protect them in their Duty,) but for his Accusers, he must say they had done him Wrong, for he was not Guilty of that for which he suffered; but he pray'd God to forgive them, and that his Death might be the last innocent Blood that might be shed in the Land; and pray'd that his might never cry for Judgment. After which, Mr. Ordinary pray'd for him, which was very uneasy to him, and he desired him not to do it. Then he desired me to pray for him; after which, I did not hear him say any thing, but left him praying: And when the Cart was drawing from under him, he lifted up his Hands towards Heaven, and said, *As I am innocent, so receive my Soul, O Lord Jesus!*



## N U M B E R   X V I I .

### *Mr. SAMUEL ATKINS his Account of his Examination before the Committee of Lords, appointed to examine after the Murder of Sir Edmundbury Godfrey. \**

**N**ovember 1st, 1678, being Friday, in the Afternoon, about Five o'Clock, Mr. Smith, one of the King's Messengers, came to Mr. Lawrenson's, at the Rhenish Wine House, in Westminster, (in Company with Mr. Hanch, Chamber-keeper to Mr. Secretary Coventry,) and sent from thence to Derby House, to speak with me; who being then not in the Way, Mr. Walband went over, supposing he might have done what Business they came about; but he presently returning, upon their telling him their Business was with me, I went over to them, and after I had sat a very little while, Mr. Smith told me, his Errand was to desire me to go with him to Mr. Secretary Coventry, to which I assented most readily, and asking him, if he knew what the Occasion of it was, he told me, No, and then pull'd a Warrant out of his Pocket, for the apprehending me; but told me, he had Commands from Mr. Secretary, not to tell me of it,

or put it in Execution, unless upon my Refusal to go with him; to which I answer'd, There should be no Occasion for the Warrant, being very free to go with him, which I thereupon presently did, and coming to Mr. Secretary's Office, I met Mr. Thinn, and enquired of him, If he knew the Reason of Mr. Secretary's Message to me? He answer'd, That it was grounded from a Letter he had newly received from a Committee of Lords appointed to examine after the Murder of Sir Edmundbury Godfrey, desiring him to find out, and send to them one Samuel Atkins. After a little Stay at Mr. Secretary's Office, he came in, and immediately gave Orders for the preparing a Letter to the Committee, to accompany me thither, which was accordingly done, and I went under the Care of the afore-said Messenger, to the said Committee, then sitting at the Lord Marquis of Winchester's House, in Lincoln's-Inn-Fields; where being come, and

\* The Trial of Mr. Samuel Atkins, for the Murder of Sir Edmundbury Godfrey, is printed in the Second Volume of the *State Trials*, p. 788. It discloses a Fact, which seems to have been industriously conceal'd by the Court, at that Time, and is not mention'd by any Historian, that we know of: As every new Circumstance must be agreeable, which tends to clear up that mysterious Piece of History, the Popish Plot, we hope we shall not be blamed for preserving the following Account, which we have copied from the MSS. of Samuel Pepys, Esq; formerly Secretary to the Admiralty, which are preserved in Magdalen College, Cambridge; it giving a further Light into the Character of one of the principal Witnesses on that Occasion; and withal, shews the miserable Condition, even of innocent Persons, whose Misfortune it is to fall under State Prosecutions.



the Letter from Mr. Secretary sent in to them, I was instantly call'd for before them, who were the

Duke of Buckingham, Lord Shaftsbury,  
Lord Halifax, Lord M. Winchester,  
Lord Effex, Lord Bishop of London,  
And Sir Philip Howard, attending;

And the following Questions were ask'd of, and answer'd by me.

Ld. Shaftsbury. Pray, Mr. Samuel Atkins, do you know one Mr. or Capt. Charles Atkins?

Samuel Atkins. Yes, my Lord.

Ld. Shaftsb. How long have you known him?

S. Atk. About two or three Years, I think.

Ld. Shaftsb. Are you related?

S. Atk. No, my Lord, only for Name-fake have call'd Cousins.

Ld. Shaftsb. Do you know, or believe, he has any Reason to do you a Prejudice?

S. Atk. No, my Lord, I know of none, nor ever gave him Occasion to have any.

Ld. Shaftsb. Did you ever tell him, upon Discourse about the Plot, that there was no Kindness (or a Want of Friendship, I think 'twas,) 'twixt Mr. Pepys and Sir Edmundbury Godfrey?

S. Atk. No, my Lord, I never mention'd Sir Edmundbury Godfrey's Name to him in my whole Life, upon any Occasion that I remember; nor ever talk'd with him about the Plot.

Ld. Effex. Do you know one Child?

S. Atk. No, my Lord; I have heard of such a Man's being concern'd in the Victualling of the Navy, but, to my Knowledge, never saw him.

Ld. Effex. No, no, this is another sort of a Man, and one whom you will be found to know very well.

S. Atk. My Lord, if upon seeing him I shall so, I shall not stick to own it.

*Hereupon, Child was call'd for in, and appear'd to be an ordinary sort of a Seafaring Man.*

Ld. Effex. Now, pray, don't you know this Man?

S. Atk. No, Sir, I never saw him in my Life, to my Remembrance.

Ld. Effex. No! What say you, Child, don't you know him?

Child. No, my Lord, I never saw him in my Life.

*Then Child was presently carried out of the Room, and Capt. Atkins call'd for, who came it at another Door of the Room, and after mutual Salutations 'twixt us, the following Questions were ask'd.*

Ld. Shaftsbury. Pray, Capt. Charles Atkins, What did Mr. Samuel Atkins tell you about Mr. Pepys, and Sir Edmundbury Godfrey?

Charles Atkins. My Lord, he told me there was a Difference 'twixt his Master and Sir Edmundbury Godfrey, and I ask'd him, If Sir Edmundbury Godfrey was a Parliament-Man, or no? He said, No: I ask'd him, Whether the Difference was upon Occasion of Mr. Pepys's being formerly accused for a Papist in the House of Commons? And whether Sir Edmundbury Godfrey might not be concern'd in doing that? He answer'd, No; and that it was upon this Occasion.

Samuel Atkins. My Lord, I guess not at what has led Capt. Atkins to say this; I assure you, I

never told him in my Life one Word of it, never talk'd to him about the Plot, or mention'd Sir Edmundbury Godfrey's Name to him (as I remember) on any Occasion; I am sure I never made him a Subject for any Discourse.

Ld. Shaftsbury. Did you not, Mr. Samuel Atkins, ask Capt. Atkins, Whether this Child was a Man of Courage and Secrecy, and bid him send Child to Derby House, to enquire for your Master, but be sure not to ask for you?

S. Atk. No, Sir, not in my Life, one Word like it.

Capt. Atkins then answer'd me, You know, Mr. Atkins, this Discourse was between us, in the Lords Room, at Derby House, in the Window.

Capt. Atkins, says I, God, your Conscience, and I, know 'tis notoriously untrue: The last Time I saw you at Derby House was, as I remember, on a Monday, Mr. Beverly (late Lieutenant of the Mountague,) being there present; which I well remember, because we all Three came out of Derby House together, about One o'Clock at Noon, and parted in King-street; I went to Dinner, and you Two towards Whitehall; Mr. Beverly, to whom I talk'd all the Way going, having invited me to dine the next Day at his House, being Tuesday, which I accordingly did. All that pass'd between us then (our Stay alone together, as I believe Mr. Beverly remembers, being not half a Quarter of an Hour,) was, That coming all Three out of the little Office together, into the Lords Room, you pull'd me to the Window next the Office Door, in the said Room, and ask'd me to lend you a Crown, to which I assented; and so going down Stairs, I staid back, Mr. Beverly going down first, and pull'd you by the Coat, and put the Crown into your Hand, to prevent Beverly's observing. This pass'd the last Time I saw you; the Time before was about the Middle of August, a little before Bartholomew Fair, when you came to me in the Lords Room, with one Capt. Hurst, (your Familiar, but a Stranger to me, having never but once, that I know of, seen him before,) and told me, there was a Friend of Capt. Hurst's, (possibly you might name his Name, and it might be Child, but I don't remember it,) that wanted the Employment of a Purser in one of the King's Ships, and had apply'd himself to Capt. Hurst, to do him what Kindness he could, and offer'd him Ten Guineas to be assistant to him. Now, says Capt. Atkins to me, pray let's bring the Man to you, and upon your promising to do him what Kindness you can, Capt. Hurst and I shall have the Ten Guineas, and you know Five Guineas, says he, will do very well for me, this Bartholomew Fair-Time. I then ask'd you, What the Man was? Whether he had been at Sea? And whether he had good Certificates? You answer'd me, You could not tell, being a Stranger to you, but you would bring him to speak with me: I then bid you so to do; and told you, all I could, or had in my Power to do for him, was to lay his Papers before the Secretary, who, if he appear'd a good Man, would lay them, with others, before the King, when Occasion offer'd: You reply'd then, That that was enough, and all you expected. After this, I call'd you (as I know you remember) to the other Side of the Room, from Capt. Hurst, and told you my Desires were, you should

should not engage me in this Matter, to get the poor Man's Money, for that I would not do it for any Consideration: You said, Indeed, you would not, nor would have me do any Thing, 'till I had seen and discoursed with the Man. You then call'd to Capt. *Hurst*, and invited him and me to come to Dinner on the Morrow, to your Lodging, to which I agreed, and ask'd you where you lodg'd; you said, You had told me oft enough, but I had ne'er been so kind to come to see you, and then told me where it was, which I have now forgot, but think 'twas in or near *Wild-street*. After this Discourse, you know, we parted, and you, and Capt. *Hurst*, left me at *Derby House*, and expected me, I suppose, at Dinner, next Day; but I, indeed, desirous to be quit of any Thing that appear'd so ill as the Business propos'd to me, came not to you, nor ever heard more of it from yourself, or Capt. *Hurst*; nor saw you again, 'till the aforesaid Twenty-first of *October*. This, Capt. *Atkins*, you know, is all true, I appeal to yourself if it be not.—

Ld. *Shafts.* Come, come, Mr. *Atkins*, you are a seeming hopeful young Man, and, for ought I see, a very ingenious one: Capt. *Atkins* has sworn this positively against you, to whom he bears no Prejudice, or Malice, but has acknowledged several Obligations from you; and to tell you truly, I don't think he has Wit enough to invent such a Lye; be ingenuous, prithee, with us, and confess what you said.

S. *Atk.* I assure your Lordship, upon my Faith, which I am ready to bind with my Oath, if you please, I ne'er said one Word in all my Life like it.

Ld. *Shafts.* Indeed, we believe Capt. *Atkins* to be a Man that has loved Wine and Women, and been a debauch'd Man; But whence would you have us to think him to be a Rascal?

S. *Atk.* Why, my Lord, I would offer this, and submit to you to judge how far a Coward is to be reckon'd so. *And hereupon, I related at large the surrendering of the King's Ship safely to the Turks, and being now a Prisoner; to which no Answer was given.*

Ld. *Shafts.* Pray, Mr. *Atkins*, What Religion are you of?

S. *Atk.* A Protestant, Sir, and my whole Family ever so.

Ld. *Shafts.* Did you ever receive the Sacrament, or take the Oaths?

S. *Atk.* No, Sir; but was under an Intention to do it on *Sunday* next.

Ld. *Essex.* 'Tis, indeed, Time.

Ld. *Shafts.* Now, I am sure, you won't do it; you can't forgive Capt. *Atkins*.

S. *Atk.* Yes, my Lord, I assure you I can, and do; and to shew it to you, I also remit to him the Money he owes me, (about Fifty Shillings,) and am ready to receive the Sacrament with a clean Conscience. I confess I have not done it, as not thinking myself oblig'd by any Employment I had to do it, and many Thousands of my Age, (*Good Protestants*;) will be found not to have done it.

Ld. *Shafts.* How long have you lived with Mr. *Pepys*?

S. *Atk.* Four Years last *August*.

Ld. *Shafts.* How old are you?

S. *Atk.* Twenty-one Years, the twenty-ninth of that Month.

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Ld. *Shafts.* Where did you live, before you came to Mr. *Pepys*?

S. *Atk.* I lived, Sir, formerly with Commissioner *Middleton*.

Ld. *Shafts.* Then I am sure he was a *Protestant*: But now you are brought into Business, and have Access to St. *James's*; 'tis to be fear'd you may be otherwise, for we are apt to suspect People inclining to the Sea.

S. *Atk.* I never had Temptation from within, or without, to alter my Religion, and hope in God I never shall. *Then the Duke of Buckingham came from the other Side of the Room towards me, and said,*

D. *Buck.* Well, Mr. *Atkins*, I ne'er saw you before that I remember; but I swear you are an ingenious Man: I see (*putting his Finger to my Forehead*) the great Workings of your Brain, and would gladly for your own Sake have you declare to us what you know of this Matter.

S. *Atk.* My Lord, I can never say otherwise than I have, (I thank your Lordship for your good Thoughts of me) nor do I know one Word more.

*And to this Effect, one after another, did most of the Lords of the Committee urge me to say somewhat, repeating very often their good Opinion of me, and their great Sorrow for my Obstinacy, which would bring the Prejudice to myself, while by a Confession I could not injure, but advantage myself; Captain Atkins joining with them to urge me to it, with Promises of making my Fortune thereby: I still gave the same Answer, declaring my utter Inability to say one Word, and avowing I never had to Captain Atkins.*

*Hereupon we were both order'd to withdraw, which we did, and after a little Stay without, they call'd me again to them, and my Lord Shaftsbury began.*

Ld. *Shafts.* Mr. *Atkins*, truly we are, every Lord of this Committee, very sorry to be thus plain with you, but here being so positive an Oath against you, we cannot answer to the Parliament the doing less than committing you to *Newgate*.

S. *Atk.* What your Lordships please; if you send me to be hang'd, I can say no more, or otherwise.

Then they again repeated their Advices severally to me, to declare what I knew, and greatly pitied me in the ill Fortune which otherwise would attend me. I as often repeated what I said at first, of my knowing nothing of what Captain *Atkins* had sworn. At last Sir *Philip Howard* (who stood by all this while) told me, I could not have lived so long Time in an Office of Business, but I must know the Laws of this Nation to be such as would bring me under severe Punishment, if I should be found to conceal this Matter, which I am well perswaded you must know of, (says he,) for that I have so seriously and very strictly examin'd Captain *Atkins* about it, and I know he would not tell me a Lye. Besides, he has no Reason to do it towards you, and being a Gentleman, Son of Sir *Jonathan Atkins*, my Nephew, otherwise well related, and won't want an Estate of his Father (if he pleases)



when he dies, he can't be thought to attempt to do it against any body. I told him, I very well knew the Laws of this Nation in that Point, and as well knew the Laws of God to be such as would draw a worse Punishment upon my Head, if I could tell a Lye, or invent any thing to the Prejudice of another Man, and that I must do, if I said any thing in this Matter, different from what I have done.

After this, I was order'd to withdraw, and Captain *Richardson*, Keeper of *Newgate*, (who waited without with the aforesaid *Child*,) called in, and a Warrant deliver'd to him in the following Words, for his keeping me in his Custody, viz.

*You are herewith to receive the Body of Mr. Samuel Atkins, for Suspicion of Felony, in concealing the Murder of Sir Edmundbury Godfrey, and him safely to keep, until he shall be thence deliver'd by due Course of Law: And for so doing, this shall be your Warrant sufficient. Given under our Hands and Seals this first Day of November, 1678.*

Sign'd,

To the Keeper of the Gaol of  
Newgate, for the City of  
London, and County of  
Middlesex.

Buckingham,  
Wincheiter,  
P. Howard.

*Memorandum.* The Deposition made by Captain *Atkins* against me, from whence these Examinations proceeded, and my being committed to Prison was grounded, hereafter follows in the exprefs Words thereof, as they were reported by the Committee to the House of Lords, and enter'd in their Book, viz.

Die Martis 12<sup>o</sup> Novemb. 1678.

*The Examination of Charles Atkins, Esq; taken upon Oath before me, One of His Majesty's Justices of the Peace for the County of Middlesex, and Liberty of Westminster, this first Day of November, 1678.*

S A I T H, That in *Derby House*, being in Discourse with *Samuel Atkins*, (Clerk to Mr. *Pepys*, Secretary of the Admiralty) the said *Samuel* did say, That Sir *Edmundbury Godfrey* had very much vilified his Master, and that if he liv'd long would be the Ruin of him; upon which the said *Samuel* did ask this Examinant whether he did think *Child* to be a Man of Courage and Secrecy; to which this Examinant did reply, That the said *Child* had been at Sea, and had behaved himself very well, as he had been inform'd; upon which the said *Samuel* did bid this Examinant send the said *Child* to his Master, Mr. *Pepys*, but not to him the said *Samuel*, for that he would not be seen to know any thing of it. This Examinant did endeavour to find out the said *Child*, but did not meet with him till the Day after this Discourse had happened betwixt him and *Samuel Atkins*, at the *Tree Tobacco-Pipes* in *Holbourn*, where this Examinant did tell *Child*, that Secretary *Pepys* would speak with him; and the next Time that this Examinant did see the said *Child*, (after that he had given him that Direction) he, the said *Child*, did endeavour to engage the said Examinant to join

with him in the Murder of a Man. The Particulars of which, this Examinant hath declared before the King and Council, *Wednesday* last past.

*Taken before me, One of His Majesty's Justices of the Peace for the County and Liberty above-mention'd.*

P. Howard.

Upon this Deposition was grounded the aforesaid Warrant for my Commitment, by Vertue whereof, Captain *Richardson* carried me presently to Prison, where I remained in a Room of his own House, without having Liberty to write to, see, or speak with any body, till *Wednesday* the sixth Day of *November*, 1678, when having well ruminated on what had past at my late Examination, I desired Captain *Richardson* to acquaint the Lords of the Committee, that at their next Meeting, I would pray to be brought before them, which he promised to do, and did, and on the said sixth of *November*, 1678, being *Wednesday*, I was carried by him to the Committee, consisting of the same Lords as before, then sitting at the Lord Privy-Seal's Chamber by the Parliament-House, where the following Questions were asked.

Nov. 6. Ld. *Halifax*. Well, Mr. *Atkins*, we hope 1678. you have consider'd of this Business, and are ready to give us some Light in it.

S. *Atk*. My Lord, I have well indeed consider'd of it, and I hope am prepar'd to shew your Lordships that nothing is to be expected from me, and so my Liberty will not be denied me.

Ld. *Halifax*. Nay then, Mr. *Atkins*, if you come to that, you must stay 'till we send for Captain *Atkins*, if it be ought you would say against him, or his Accusation.

S. *Atk*. My Lord, I hope I shall confute him in several Circumstances, which I have better considered, and clear to you my Innocence.

Ld. *Sbafts*. Why, Mr. *Atkins*, Captain *Atkins* declares to us he has much more against you, and several other Circumstances, by which, he says, you'll appear the worst Man living.

S. *Atk*. My Lord, if you please, I desire he may be sent for.

Upon this I was ordered to withdraw, and Captain *Atkins* being sent for to Sir *Philip Howard's*, in *Scotland-Yard*, came in about Half an Hour, and meeting me in the Passage leading up the Stairs to the Chamber where the Council was sitting, I observed his Countenance altered extremely, and took Notice of it to him: He pass'd by me, and went up the Stairs, and staying there in Expectation of being call'd, I went to him with my Keeper, (Mr. *Lion*,) and discoursing together, I ask'd him what had induc'd him to bring this Mischief upon me, and whether he design'd to ruin me, that had preserv'd him from it. He answer'd, No, No, not he. I further ask'd him, if I look'd like one that had done, or knew of any Murder; and whether he thought in his Conscience I did: No, faith, says he, I dare swear for you for that Matter, only these Words past between us: Well, says I, you say 'twas between us, so 'tis impossible to contradict your Oath; but God, you and I know, 'twas not so. Hereupon, after some little other Discourse, he went down Stairs, and I following him, ask'd

ask'd him over again, Whether he had any Thing more to say against me, or whether indeed he thought I knew any Thing of the Murder? To which he answered (as before,) No, not he, he did not think it; of which I desired Mr. *Lion* to take Notice; and presently after this, the Lords call'd for us both in, and said;

Ld. *Shaftsby*. Well, Mr. *Atkins*, What is it you have to say?

S. *Atk*. I desire, my Lords, if you please, that Captain *Atkins's* Information may be read to me, or else I shall repair to my Memory to repeat it.

Lords. Do, repair to your Memory.

Then I recited it as 'tis herein before mentioned, and answer'd to it thus: As to his positive Oath, my Lords, about the Difference he says I told him was between Sir *Edmundbury Godfrey* and Mr. *Pepys*, that can admit of no more than my denying it; and being ready and desirous, if you please, to swear to the Truth of what I say. As to his Question, Whether Sir *Edmundbury Godfrey* was a Parliament-Man or not, and the Answer he says I should give him, that he was not, I am also as ready to depose, that to this Minute, I don't know whether he was so or no, and so could not make him that Answer. Then as to the Rise of the Difference to be, as he calls it, upon this Occasion, the last Time I saw Captain *Atkins*, (before Sir *Edmundbury Godfrey's* Death,) was about the Middle of *August*, a little before *Bartolomew* Fair-Time, and long enough before any Discovery was made of the Plot; so pray what means he by upon this Occasion? Besides, I assure your Lordships, I did not know till after the Death of Sir *Edmundbury Godfrey*, that he took any Depositions, or was otherwise instrumental in discovering any Part of the Plot; and the first Notice I had of it, was from my Fellow Clerk, Mr. *Walbank*, who told me, (I think on the *Monday*) in this Manner of it: Poor Sir *Edmundbury Godfrey*! Why, says I, pray what's the Matter with him? Why, they say, replies he, he is murder'd by the *Papists*, having been gone from his House, and not heard of this Day or two: Lord, says I, why should he be murder'd, a very good and honest Gentleman? I but (says *Walbank*,) the Reason of it was, as 'tis said, because he was the first that took the Depositions, &c. about the Plot. Upon this the Lords all cry'd out, they did not believe 'twas possible I that liv'd in an Office of so great Business, should not hear of his taking the Depositions till after his Death, since they were done (I think they said a Month before the King went to *Newmarket*) and carried to the Council. I answered, and industriously asserted, what was really Truth, that I did not. But my Lords, says I, pray suppose (what is so utterly in Fact untrue) I had said to Captain *Atkins* what he swears I did; I must now declare I had no Ground to say so; and that it must arise purely from my own Invention, and if I invented a Lye, I must suffer for doing it; And pray, my Lords, what will come on't? Nay, nay, says my Lord *Shaftsbury*, leave us to make the Use of it; do you but confess it, you shall be safe, and we'll apply it. My Lord, says I, I can't do it; I hope I never shall tell a Lye to any Man's Prejudice, tho' I meet with ne'er so great Danger. My Lord *Shaftsbury* answer'd, Indeed, Mr. *Atkins*, Ten then may swear against you, and for ought I know all be-

lye you; And are you innocent? You're most unfortunate, and Captain *Atkins* the greatest Villain in the World. Pray, look one another in the Face, (so we gazed very earnestly) and my Lord *Shaftsbury* went on, speaking to Captain *Atkins*: Come, Captain *Atkins*, confess truly and ingeniously, Have you belyed Mr. *Atkins*, or no? May be you may have mistaken; pray consider it, and remember the Injury you'll do this young Man, if this be not true: You won't have more to answer for before God, if you should waste and destroy an Emperor and his Country, than you'll have if you wrongfully ruin him, who is in himself (as every Man is) a little Emperor. After this Sort my Lord *Shaftsbury* press'd Captain *Atkins* very home, and while he was doing so, and we looking stedfastly upon each other, Captain *Atkins's* Countenance chang'd very white, which I taking Notice of, and observing to the Lords, my Lord Marquis of *Winchester* cried, Where, where? I don't see it. My Lord, says I, I humbly conceive 'tis very apparent: I, I, where? says his Lordship, turning his Head away; the other Lords said nothing. Then Captain *Atkins* having a Tobacco-Pipe rolling about in his Fingers upon the Table, threw it down, and said, Why should I say so, my Lords, if he had not told me? Thereupon I grew indeed angry, and press'd very hotly for my Liberty, avowing my Innocence with several Protestations; but all was too little. My Lord Bishop of *London* (whom I took to be more tender-hearted than the rest) I apply'd myself to, and talk'd about my Religion, and of my having never gone to Mass, nor ever known, or seen any Priest in my Life that I remember'd. He at last was pleas'd to say, Truly I believe you are a Protestant; but this Oath is greatly against you, and he still affirms it positively. My Lord, says I, 'tis very strange I should invent such a Lye to tell Captain *Atkins* of my Master; I hope I shall not be found so faithless a Servant, when I never in my whole Life heard Mr. *Pepys* mention Sir *Edmundbury Godfrey's* Name, that I remember, but upon an Occasion (which I mention'd at large) of our going before him about some Money lost from Mr. *Pepys's* House, and then they appear'd as great Friends as could be, and shew'd mutually very great Expressions of Kindness and Respect. 'Tis strange I should ask him of the Courage and Secrecy of a Man I never saw; and as strange to bid him send him to my Master; who will, I suppose, declare whether I ever spoke to him about any such Man, as I am sure I did not, nor could. At last, my Lord, says I, I avow to you, Mr. *Pepys* never in his Life committed any Secret to me of any Kind, nor ever mentioned, upon any Occasion, one Word about Sir *Edmundbury Godfrey*. And this your Lordships would easily believe, if you knew how tottering I stand in his Opinion, having been once parted from him, and at this Moment I believe remain under his ill Apprehension. Why, says my Lord Bishop, are you given to Drink, or Debauchery? No, my Lord, I thank God not. But Mr. *Pepys* is very severe in his House, and for the least Absence from it without his Knowledge, will discard any of his Servants from his Favour: I coming very young to him, was inclin'd, thro' Boyishness, to too much Desire of Ease and Liberty, and so begot and continued his Severity towards me.

While



While I was thus talking to my Lord of *London*, Captain *Atkins* was discoursing to the other Lords, at the other End of the Room, and my Lord *Shaftsbury* observing what we both said, turn'd towards me, and stopp'd my going on: Why, you talk, Mr. *Atkins*, (says my Lord,) 'twill be made appear, that you are the greatest Favourite he has; you read all his Letters, read to him by Night; And what say you, if I can prove, from the Servants in your own House, that you are reputed a Papist? My Lord, says I to that, if your Lordship can do that, or any Man in the World, prove I am in the least wise, or ever was inclined that Way, I'll be contented to be hanged, without saying a Word more. My Lord *Shaftsbury* goes then on again; Pray, Mr. *Atkins*, What Books did you use to read to Mr. *Pepys*? My Lord, says I, I have not lately read any to him, but formerly I have read the Bible, and other good Books; sometimes History, other Times Divinity. — Never any Popish Books? — No, never in my Life, I assure your Lordship, never any; but, as I remember, one Book of an *English* Divine's, about their Error in their Doctrine of Transubstantiation, but the Book's Name I forget.

After all this, I found I must return to Prison; I offered Bail, which being deny'd me, I pray'd Liberty, that my Sister might come to see me, which was granted she should for one Time, the Keeper of the Prison to be by while she stay'd with me; and after that I withdrew, and Captain *Atkins* together; he, as soon as I was out, stepped in to the Lords again, and (as I understood afterwards) desired the Keeper might have Orders for his coming to me, upon his Suggestion to the Lords, he would bring me to confess, which was granted he should; and so I was recarried to Prison, and remain'd there 'till *Friday* the Eighth of *November*, without having heard from, or seen any Person, saving my Sister, who came to me the Day before, and remained in the Room Half a Quarter of an Hour with Captain *Richardson*.

*Friday* Morning, being the Eighth of *November*, Capt. *Atkins* comes up to my Chamber (with Capt. *Richardson*, in whose House I still remain'd,) and finding me in Bed, throws open the Curtain, and bids me Good Morrow; I seeing who it was, leap'd out of the Bed, and returning his Good Morrow, called to Capt. *Richardson*, who was going down Stairs again, and pray'd I might speak a Word with him, and so taking him into the next Room, For God's Sake, says I to him, don't leave me alone with this Man, who having already sworn falsely against me, will, for ought I know, go back to the Lords, and swear any thing more he lists; Capt. *Richardson* answered, The Lords had directed he must, and he must be alone with you: Oh! pray, says I, suffer it not, for I vow I won't speak one Word to him alone. Notwithstanding this, Capt. *Richardson* pull'd to the Door, and left us both together, promising to return immediately. The Door was not sooner shut, and Capt. *Richardson* gone, than Capt. *Atkins*, wringing his Hands, and crying with the Tears upon his Face, said to me, Oh! Mr. *Atkins*, we are both undone! How undone? says I. Oh Lord! says he, there's a Man come to Town last Night, lay at Mr. Secretary *Williamson's*, was examin'd two Hours by the King, and

has sworn positively against you, That you were, or were to have been at the Murder of Sir *Edmundbury Godfrey*; I am not, says he, very perfect whether. Well, says I, God blefs him! But how, pray, are you undone? 'Tis I am so, if this be true: Says he, (still crying, and laying his Hand upon his Breast,) I am undone. That's true indeed, says I, your Guilt upon your Conscience, in bringing this falsely upon me, has undone you to the Purpose. But, pray, who is this Man? Do you know him? I don't know his Name, says he, nor ever saw him but once before, and that was in *Essex* Buildings; the Woman of the House being arrested where we were, he and I rescued her from the Bailiffs. 'Tis strange, says I, he should come and enquire for you, and find you out as soon as e'er he came to Town, and you not know him, nor ever saw him but once. 'Tis so, says he; he came to me, to enquire about a Gentleman we had Business with before he went out of Town. Well, I answered, I can't help what he has done; I thank you for all this, but won't doubt, if Twenty swear against me, I shall appear innocent, I am sure I shall to the last Moment of my Life. Pray, Mr. *Atkins*, says he, consider of it: My Uncle, *Phil. Howard*, bid me come to you, to tell you of it, and pray confess, before 'tis too late, and you repent you did not; there's nothing can hurt you, but your Fortune may be made by it; And what need you care for your Master? Pray, says I, Why don't you as well ask me to forego my Salvation? A Thousand Deaths shall not extort a Lye from me; and you know I can say nothing: Pray consider you of it, and repair the Injury you have done me, as well as you can. In the Middle of our Discourse, walking together in the Room, he suddenly stood still, and turning toward me, You did not tell me, says he, your Master had a House at *Roan*, in *France*, neither, did you? Oh strange! says I; Why, have you sworn that too? No, not I, replied he, What should I swear it for? But you told me so. At which, being greatly surprized and amazed, I could not presently say any Thing to him, and while I was silent he goes on. And you know, says he, you desired me to impeach your Master about this Murder, because he should keep it off from the Duke of *York*. Oh! Lord of Heaven! says I, And have you deposed that too? No, not I, says he; What should I swear it for? But you know you told me so. Mr. *Atkins*, says I, you are the greatest Villain, and worst Man in the World, and I am sure you will repent the cursed Mischief you have endeavoured to do me, by your damn'd false Inventions and Oaths: And while I was, after this Sort, talking to him, he interrupted me, bidding me consider of it against the Afternoon, when he said I should be call'd for before the Committee of Lords; and so took his Leave, and went away.

In the Afternoon of the said *Friday*, being the Eighth of *November*, 1678, Capt. *Richardson* sent for me out of my Chamber, and causing a Pair of Irons to be put upon my Legs, he search'd me, and took what Papers he found in my Pockets, into his Possession, and immediately carried me to the Committee of the same Lords as before at my Lord Privy-Seal's Chamber, adjoining to the Parliament-House; where having waited without some Time, the Lords sent for me into the Room, where I found a Person standing on the

the far Side of the Table, with a blackish Perriwig, and a Campaign Coat, (and whom I since understand to be Mr. *Bedlow*;) he came toward me at my coming in, look'd me earnestly in the Face, saluted me, which I return'd, and so went again to the further Side of the Table; and these Questions were asked, and thus answered.

*Ld. Shaftsbury.* Mr. *Atkins*, Do you know this Gentleman?

*S. Atkins.* No, my Lord, I don't know I ever saw him in my Life.

*Mr. Bedlow.* I believe, Sir, I have seen you somewhere, I think, but cannot tell where: I don't, indeed, remember your Face.

*D. Buckingham.* Is this the Man, Mr. *Bedlow*? (Pointing to me.)

*Mr. Bedlow.* My Lord, I can't swear this is he; 'twas a young Man, and he told me his Name was *Atkins*, a Clerk, belonging to *Derby House*, but I cannot swear this is the same Person.

*Ld. London.* Where were you, Mr. *Atkins*, on Monday the Fourteenth Day of *October* last, between Nine and Ten at Night?

*S. Atk.* I can't well remember, my Lord, but I suppose at Home, for I am seldom out at that Time of Night.

*Ld. London.* Were you in the *Pell-Mell*, or that Way, that you remember?

*S. Atk.* No, my Lord, I believe verily not.

*Hereupon, the Gentleman, Mr. Bedlow, was order'd to withdraw; and my Lord Shaftsbury calling me to him, said to me;*

*Ld. Shaftsbury.* Mr. *Atkins*, if you are innocent, you're the most unfortunate Wretch living. Pray attend to what I say; I assure you, 'tis good News for you. There remains but one Way in the World to save thy Life, and that I would have you make Use of; and you may do it without Injury to yourself, if you will. Confess all you know, and make a Discovery of this Matter, and your Life shall be sav'd.

*S. Atk.* My Lord, had I any to make; could I say one Word, more or less, in this Matter; or were I at all guilty in any Part of it, I suppose you'll please to believe, that the Horror of my Conscience, and the Punishment I should justly expect from God and Man, for such Offence, would lead me to make an ingenuous Confession, to save my own Life, that I might thereby get Time to repent, and beg Forgiveness from God Almighty. But as I am innocent in every Part of what is said about me, I hope you'll neither advise, or desire me to go about to wrong my Conscience, or stain my Soul, to endeavour to live a few Moments in this World, and to avoid Death for a Time, which will, at length, overtake every body. I assure your Lordships, my Prayers are to God Almighty, to give me Grace and Strength to go through to the last, and rather suffer a Thousand Deaths, than as much as tell a solemn Lye to the Prejudice of any Person.

*Ld. Shaftsb.* Then I tell you what, Mr. *Atkins*, and that I ne'er said to you before; since you are so gallant, I assure you, you'll either be hang'd, or Knighted; if the Papists rise and cut our Throats, you'll be Knighted; if not, you'll be hang'd. Here's first what you said to Mr. *Atkins*, and then this Gentleman's Oath, which though not positive, yet with such Circumstances against you, as I doubt, whether a Jury, in

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this Case, won't find you Guilty; besides, other collateral Circumstances there may be: And another Thing there is, that there are several others, well known to this Mr. *Bedlow*, to have been concern'd in it.

*D. Buckingham.* And are here in the House, in Custody.

*Ld. Shaftsb.* And if one of those swear you were in it, all the World cannot save you.

*S. Atk.* My Lord, my Prayers are, and shall be, that one Person may but be detected, who was really in the Murder, and I am sure I shall be acquitted; and I cannot suffer, but from the Thing's being misplaced.

*D. Buck.* Oh, he'll confess nothing, he expects a Pardon.

*Ld. Shaftsb.* I'll secure him from that, I warrant you; there's Three Hundred to One.

*S. Atk.* My Lord, I expect no Pardon, but desire Death when I am found to deserve it: I have nothing to trust to but my Innocence, next to the Goodness and Justice of God Almighty, to whom I commit myself.

*After this, I was directed to withdraw, and the Keeper ordered to carry me back to Prison, which was accordingly done.*

*Memorandum.* The Deposition made this 8th of November, 1678, before the Lords of this Committee, by Mr. *Bedlow*, concerning this Matter, hereafter follows in the express Words thereof; as they were reported by the said Committee to the House of Lords, and entered in their Journal Book, viz.

Die Martis 12<sup>o</sup> Novembris, 1678.

*The Examinations taken, November the 8th, 1678, at the Committee of Lords, for enquiring into the Murder of Sir Edmundbury Godfrey, were read as follows.*

**W**illiam *Bedlow*, being sworn in the Lords House, was call'd in and examined, saith on his Oath, That this Examinant being treated with by Mr. *Leefaire*, and Mr. *Welch*, who are two Jesuits, about the Beginning of *October* last, they offered him a Reward of 4000*l.* if he would be one of the Four, or Six, that should kill a Man, that was a great Obstacle of their Design; he, this Deponent, promised to be one to do it, upon their giving him Notice. Afterwards, (viz. the Friday before Sir *Edmundbury Godfrey* was missing,) Mr. *Leefaire* met him, this Deponent, about Four of the Clock, in *Grays-Inn-Walks*, and appointed to meet him again in the same Place, about Four of the Clock the next Day, to do that Business: That upon taking the Sacrament to do it, he, this Deponent, should have the Money paid to himself, or any Friend he should name; but he, this Deponent, not liking the Design, failed of meeting him: The next Night after, being Sunday, he met Mr. *Leefaire* again, by Accident, in *Fleet-Street*, going into *Redlion-Court*, about Five of the Clock; Mr. *Leefaire* then desired him not to fail of meeting him the next Night, (being Monday,) about the same Hour, at the *Palsgrave's-Head Tavern*, that he might employ this Deponent in some other special Business; but this Deponent came rarer than the Time appointed, and so failed to meet him there, but left Word at the Bar of that Tavern, that he would meet him at Eight of



the Clock in the Cloister of *Somerſet-Houſe* Court; and accordingly, betwixt Eight and Nine of the Clock, this Deponent came thither, and found *Leeſaire* walking there, who ſaid, he had ſtay'd almoſt an Hour for him; they paſſed the Time there about Half an Hour, *Leeſaire* telling him how much the Church of *Rome*, and the Pope, were obliged to him, and what Rewards he ſhould have for his Secrecy and Fidelity to them.

Afterwards he deſired him, this Deponent, to walk into the miſt of the Court, where he, the ſaid *Leeſaire*, might ſay ſomething to this Deponent, and no body over-hear it; and there he told this Deponent, that the Perſon whom he was to kill, was kill'd, and his Body then lay in *Somerſet-Houſe*; and that he did believe, that the Excuse which this Deponent had made him before, for not coming to the murdering of him, was real; and that he knew his Fidelity was ſuch, that he ſhould have half the Reward, if he would help to carry the Body to a Place where they had choſe to lay him.

This Deponent aſked to know firſt, Who were to be the Perſons that were to go with him? *Leeſaire* told him, they were himſelf, Mr. *Walſh*, the Lord *Bellaſis's* Gentleman, Mr. *Atkins*, (*Pepys's* Clerk,) and one that he had often ſeen in the Queen's Chapel: Then *Leeſaire* brought this Deponent by the Hand, in the Dark, through the Entry, unto that Room, which he ſhewed the Duke of *Monmouth*, and knock'd ſoftly with his Finger at the Door; and when it was opened, *Leeſaire* led this Deponent into it, which was dark: *Leeſaire* then pulled a dark Lanthorn from under his Coat, and ſhew'd a ſmall Light in the Room, where this Deponent ſaw the Perſons he before mentioned; of whom this Deponent knew *Leeſaire*, Mr. *Walſh*, and the other Perſon he ſaw often in the Chapel; and the other Two own'd themſelves, the one to be the Lord *Bellaſis's* Servant, and the other to be Mr. *Atkins*, (*Pepys's* Clerk.)

And this Deponent ſaith, That they did agree to carry the Body in a Chair to the Corner of *Clarendon-Houſe*, and there to put him in a Coach, to carry him to the Place where he was found. Having concluded this, they agreed to carry him off at Eleven of the Clock the ſame Night: Then ſome of them turning about, they throw'd off a Cloak that lay upon him, and ſhewed this Deponent the Body. This Deponent aſked them, who it was? They told him, it was an old Man, that belonged to a Perſon of Quality, who had taken ſome Examinations tending to the Diſcovery of their Deſign. This Deponent aſked them further, Why it was not more proper to kill the Perſon of Quality himſelf? They answer'd, No; for this Man had the Examinations in his own Cuſtody; and that their Deſign of getting him thither, was to get him to ſend for them by fair Means or foul, and then they did not queſtion, but the next Examination would be ſo contrary to that, that it ſhould, upon their Trials, appear two ſeveral Stories; and when they ſhould be brought to Trial, upon the latter Examination, they would produce the former to contradict it, that it might ſeem Partiality to the World: Upon which Reaſons, this Deponent ſeemed ſatisfied, and aſked them, Where they killed him? They told him, At *Somerſet-Houſe*. Then this Deponent beg'd their Pardon for Half an Hour, and he would wait upon them

again; but this Deponent went away, and came no more: But the next Day, about Eleven of the Clock, this Deponent met *Leeſaire* by Accident, croſſing *Lincoln's-Inn-Fields*, and then they went together unto the *Grey-bound* Tavern in *Fleet-Street*; *Leeſaire* (putting his Cane up to his Noſe,) ſaid, He had ſomething to ſay to him: *Leeſaire* there charged this Deponent for not coming the laſt Night, according to his Promiſe; this Deponent told him, He was not willing to come, becauſe he knew the Perſon: *Leeſaire* then aſked him, Who it was? This Deponent told him, it was Juſtice *Godfrey*; *Leeſaire* then acknowledged it was ſo, and he was willing to diſpenſe with this Deponent's not coming, if he would aſſure him of his Fidelity.

This Deponent then aſked *Leeſaire*, How they got him thither, and where they found him? *Leeſaire* told him, That himſelf, *Walſh*, and the Lord *Bellaſis's* Gentleman, met him by the *King's-Head* Inn, in the *Strand*, croſſing the Street, in the Evening, before Five of the Clock, and told him, That if he would pleaſe to go with them ſo far as *Strand-Bridge*, they would bring him to a Place near St. *Clement's* Church, where there were a Company met, principal Plotters of that Deſign againſt the King, and there (if he would go preſently,) he might take them, and the principal of their Papers; he answered, That he thought it not convenient to go himſelf, but he would ſend his Warrant, and the Conſtable: They told him, If he did make ſo much Delay, they might be gone; and that if he would walk up ſo far as *Strand-Bridge*, one of them would go and call a Conſtable to him there, and he might give his Order preſently: Whereupon, he walk'd with them ſo far as *Somerſet-Houſe*, and there they made a Halt: They told him, it would be leſs obſerved, if he walked in *Somerſet-Houſe*, than to ſtand in the Street; and thereupon, Two of them walked in with him, and the other pretended to go call a Conſtable, and when they had walked a Turn or two in the Court, Two more Perſons came forth, and ſhew'd him into a Room, and when they had him ſecure there, they held a Piſtol to him, threatning, if he made a Noiſe, they would ſhoot him, but if he would answer their Expectations, they would do him no Harm. Then they aſked him to ſend for thoſe Examinations he had taken about thoſe that were committed; he answered, They were not in his Power, for he had ſent them to *Whiteball*. Upon that, and his reſuſing to answer other Queſtions, they ſeized him, and ſtified him with a Pillow, and ſo they thought he had been dead; but coming into the Room ſome Time after, they found him ſtruggling, and then they ſtrangled him with a long Cravat; (which Cravat this Deponent ſaw the *Monday*, at Night, about his Neck.) Then this Deponent aſked *Leeſaire*, Why they carried him into the Fields? Or what they deſigned by it? He answered, that they had made a Wound in his Body, and laid his Sword by him, that it ſhould ſeem he had killed himſelf; and that they did not queſtion, that the Diſcovery of killing him would ever have been made; neither did they doubt, but that their Deſign would have its Effect. Then *Leeſaire* told this Deponent, That as he would be answerable to *Chriſt Jeſus*, at the laſt Day, he ſhould be faithful to the Cauſe; and ſo they parted.

The same Time, Mr. *Atkins* being call'd in before Mr. *Bedlow*, Mr. *Bedlow* saith, That he is, in all Things, very like the Person he saw in the Room with Sir *Edmundbury Godfrey's* dead Body; and he doth verily believe it was him that own'd himself to be *Pepys's* Clerk; but because he never saw him before that Time, he cannot positively swear it, but he doth verily believe him to be that Man.

On *Friday*, the aforesaid Eighth of *November*, in the Evening, I was brought back to Prison in Irons, (which I kept on 'till the *Monday* following, but were then, by the Favour of Capt. *Richardson*, taken off,) and remain'd that Night in Capt. *Richardson's* House; the next Day was removed thence into the Press-Yard, where I continued kept very close 'till *Monday* the Eleventh of *November*, 1678.

*November 11, 1678. Monday Morning*, being the Eleventh of *November*, Capt. *Atkins* made me a second Visit, and saluting me with the Good Morrow, ask'd if I had been before the Lords? I told him, Yes I was, last *Friday*, and saw a Person there I knew not, nor he me, nor did he swear any Thing (that I knew) against me: Ay, says he, but he has since that, in the House of Commons, on *Saturday* Night, swore, that you were at *Somerset-House* when Sir *Edmundbury Godfrey's* Body lay there; and my Uncle, *Phil. Howard*, bid me come to you, to tell you of it, that you may consider, and confess what you know before it be too late. After which sort he earnestly seem'd to press me to say somewhat. I told him, My last Breath (if I suffer,) must and shall agree with what I said at first, of my being unable to say any Thing of this whole Matter, more than the unborn Child. Pray, Capt. *Atkins*, Who is this Man? Why, says he, his Name is *Bedlum*. Who is he, pray? Is he a Man of any good Fame? No, answer'd he, I think of no very good Fame. Do you know him, pray? Yes, says he, I have known him three or four Months, but have no very great Acquaintance with him: (*Observe, he at first told me, he ne'er saw him but once.*) Pugh, says he, I don't believe a Word he says; they're all Shams; he's certainly hired by those that did it. Do you think so? says I: Ay, ay, says he, trouble not yourself about it. And so he took his Leave of me; telling me, he believed I should be call'd again before the Lords.

*Novemb. 12, 1678. Tuesday* the 12th of *November*, four Gentlemen of the House of Commons came to me to *Newgate*, (two of whom only I knew, Mr. *Sacheverell*, and Col. *Birch*,) and having sent for me to them in Capt. *Richardson's* House, they told me the Occasion of their coming, and in what a desperate Posture my Life lay in, so as there seem'd no Possibility to expect the saving of it, but by pouring myself out in a Confession to them, and so aggravated the Murder, with its (indeed) ill Circumstances, and ask'd me what I had to say. I first told them, I heartily wished I could give them any Light in it, I should deem myself very happy, to be so enabled to acquit myself of the Duty I owe to his Majesty, and the Interest of this Nation; but I was purely innocent, and whatever hath been sworn against me (let it be more or less, and by more or fewer

Hands,) might with the same Truth be sworn against a Man who never was on this Side *York*: So desiring their Patience, I briefly run over to them what had happen'd at my several Examinations before the Lords. They ask'd me then, Whether I knew one *Welch*, or *Prichard*? I told them, No, nor ever heard of them that I remember'd. Whether I remember'd no Circumstance on *Monday* about a Dark Lanthorn? My Answer was, No; that I had not seen one, as I remember'd, many Months. Whether I was not then at *Somerset-House*? I said, No; neither then, nor any Time before or since in my whole Life: How, and where, I spent my Time the *Saturday*, *Sunday*, and *Monday*, the 12th, 13th, and 14th of *October*? I answer'd, I could not presently tell, but could soon recollect. They told me, I did not seem to have so ill a Memory. I said, I suppos'd most would be found to have as ill to answer such a Question. Some other little Questions they ask'd, and I made true Answers to, tho' not to their Satisfaction; and so they left me, asking me over again, just at their Departure, very seriously, If I knew any Thing of the Murder, or the Plot? I avow'd, with several Asseverations, I did not.

Upon my returning to my Chamber, I consider'd, and brought to my perfect Remembrance, how I had pass'd almost every Hour of those aforesaid three Days: And so I remain'd there without hearing from, seeing or speaking with any Creature, 'till *Thursday* the 21st of *November*, 1678.

On *Tuesday* Morning, being the 19th *Novemb. 19, of November*, (in the Interval) my 1678. Keeper comes to me, and bidding me rise, and dress myself, which I accordingly did, he puts a great Pair of Irons on my Leg, and told me, I must go then to have my Trial at the *King's-Bench* Bar. Lord, says I, I wonder I had no forehand Notice of it; I have no Witnesses ready: He answer'd, he could not help it, but go I must. After I had been ready about an Hour, expecting their calling me down, my Keeper comes up, and informs me of the Mistake, the Order being for one Mr. *Staly* to be brought up, and not me; but that on the Morrow I should prepare to go. The Morrow comes, I hear nothing of it.

The following Day, being *Thurs- Novemb. 21, day* the 21st of *November*, my Sister, 1678. and a Gentleman of my Acquaintance (having Relation to the Law) Mr. *Hayes*, came to see me with a Keeper, by Order from my Lord Chief Justice, and brought me ill News of what *Bedlow* had sworn against me, and the little Hopes there remain'd of saving my Life; but that they were doing all they could for me, towards the making my Defence, and so shew'd me a Paper they had drawn up (by Collections they had made from several People in whose Company I spent the Time) of my passing the 12th, 13th and 14th Days of *October*, which agreed with what I had done in my Memory in Substance, and different in no essential Circumstance: And so they left me, bidding me consider what I had to say, for that my Trial would be in a Day or two.

Accordingly having the Use of Pen, Ink and Paper given me, by Order from my Lord Chief Justice, I set upon drawing up in Writing, what I had to say in my Defence, and did it in a little



little Time as well as I could. In the mean while a Grand Jury was summon'd, and a Bill found against me at the *King's-Bench*, for a Principal in the Murder of Sir *Edmundbury Godfrey*; but (upon what Occasion I know not) my Trial came not on this Term. Presently after 'twas over, Captain *Richardson* sent for, and took from me (by Order I suppose) all the Papers I had drawn up preparatory to my Trial, and carried them, (I have great Reason to believe,) before the Committee of Lords, who, I suppose, from thence having learnt who were the Witnesses I should have to prove the Expence of the Evening on *Monday* the 14th of *October*, (the very Time Mr. *Bedlow* accuses me to have been at *Somerſet-Houſe*,) found out where they liv'd, sent for them by a Messenger to attend them, and in Mr. *Bedlow's* Presence, and the King's Council, having put them all to their Oaths, examin'd them distinctly and crossly, about all they could say relating to me, and my passing my Time, where, and with whom, on the said *Monday* Night.

I remain'd in Prison till the following Term, (two Sessions of Gaol Delivery having pass'd,) beginning the 23d of *Jan.* 167<sup>2</sup>, and desisted from moving in Court for my Trial, till the latter End of it, being in Expectation I should be brought to it without Trouble or Charge to myself.

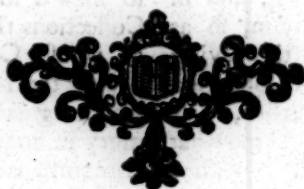
But finding no Intention, or Preparation for it from the Attorney-General (whom we consulted in it, and desir'd not to oppose us in our Motion in Court for a Trial) on *Thursday*, being the 6th of *February*, a Motion was made for my being tried before the End of the Term, and granted, the King's Council declaring their being ready on his Part: Pursuant thereto, another Motion was made the next Day, being *Friday*, for my being brought to the Bar on the Morrow after to be arraign'd, in order to my Trial.

Accordingly on *Saturday* Morning, *February* 8, 167<sup>2</sup>, I was brought thither and arraign'd upon a Bill found against me, just before my coming to the Bar, as Accessary to the Murder of Sir *Edmundbury Godfrey*: After the Indictment was read, I ask'd the Court when my Trial would come on, and was answer'd by my Lord Chief Justice, that he thought on *Monday*: Then I mov'd his Lordship and the Court, that a Rule of Court might be granted for the bringing in thither against my Trial, such Papers as were in the Hands of either of the Secretaries of State, Clerk of the House of Lords, or Recorder of the City of *London*, relating to my Af-

fair, and had for Answer, that 'twas not proper to grant a Rule of Court for it, but they doubted not, if I had the Attorney-General attended about it, he would see I should receive all that was just and fit for me therein. After I had done speaking, my Lord Chief Justice ask'd, if I was, or ever had been a *Papist*; to which answering No, I was directed to withdraw, and so went back to Prison.

On *Monday* Morning I was brought *February* 10, again to the Bench-Bar, in Company 167<sup>2</sup>. with Mr. *Hill*, *Green*, and *Berry*, three Persons accus'd by Mr. *Prance*, as Actors in the Murder of Sir *Edmundbury Godfrey*, and after a short Stay there, the Court directed I should be carried aside, 'till the Trials of those three Persons were over, and accordingly I was so. About Three of the Clock in the Afternoon, their Trials being ended, I was called to the Bar, and my Lord Chief Justice told me, their Trials had taken them up so much Time, and it being so near the End of the Term, I must be content to stay 'till the Sessions for mine; and so ask'd me if I had Bail ready, and my Liberty should be had thereupon. I answer'd, I was better prepar'd for my Trial, than with Bail, and insisting upon the Hardship I had endured in a long Imprisonment, earnestly begged for my Trial. His Lordship told me, their Business could not all be put off for mine, and I must be contented. I thereupon was proposing Bail to the Court, while Captain *Lloyd*, one of my Witnesses, stood up and told them, he was, and had been detain'd a considerable Time in Town to give Evidence for me, and could not possibly be in *England* at the next Sessions; which I also back'd with Assurances, that 'twas his, and several other of my Witnesses Cases, whose Occasions indispensably called them away: Upon which, the Morrow-Morning, very early, was appointed for my Trial, and so I was directed to withdraw, and went back to Prison.

On the Morrow-Morning, being *February* 11, *Tuesday* the 11th Day of *Feb.* 167<sup>2</sup>, 167<sup>2</sup>. I was accordingly brought to the Bar, and arraign'd with Two Indictments, One as Principal, the other as Accessary to the Murder of Sir *Edmundbury Godfrey*, and after very full hearing of the Evidence against me, and being suffered to say very little of the great deal of Matter I had to urge in my Defence, the Jury (who were all Gentlemen of Quality of the County of *Middlesex*,) without stirring from the Bar, gave their Verdict in NOT GUILTY: And I was, thereupon, immediately order'd to be discharged.



## NUMBER XVIII.

*Some Observations upon the late Trials of Sir George Wakeman, Corker, and Marshal, &c. \**

[By Tom Tickle-foot, the Taborer, late Clerk to Justice Clodpate.]

THE Reader may perhaps wonder why I should wave the Employment of Clerking to a *Westminster* Justice, who seldom are of the wisest, and turn Minstrel; but upon serious Thoughts he will respect me for my Integrity, and give greater Faith to what I shall offer now; for to say the Truth, the Methods of my former Life were so villanous, in order to my Calling, as I could no longer dispense with them; for I was forced to inform my Master's Worship of all the Bawdy-Houses within his District, which by that means were all set under Contribution, and out of their Compositions for Enormities I had Poundage, which was all my Subsistence, for his Worship engrossed all the Warrant-Revenue to himself; so I grew of late melancholy, through the failing of Trade, the private Misses driving all before them, that publick-Sinners are now of all People the most miserable; so I retired some time before my Master's Death: In which Retirement, as Barbers having nothing to do learn to play on the Cittern, I got a Stroke upon the Pipe and Tabor, by which means I now live very comfortably; yet willing to give the World a Taste of my old Office of Clerkship, I have made these following Observations.

The first Part of the Trial was spent in the Examination of *Dugdale*, *Prance*, and *Jennison*, to prove the Plot, so to obviate the common Objection, that it was unreasonable to believe two Men against so many, upon bare Testimony, without other circumstantial Evidence, that was done with such Notoriety, as satisfied all unprejudiced Persons: Among other things, it was proved, by an undeniable Witness, Mr. *Jennison*, corroborated with notable Circumstances, that *Ireland* died with a Lye in his Mouth; as by Consequence Sir *John Southcot* and his Lady live with the same Veracity, which my old Master would have made another kind of Use on than was made: Then were some fine Harangues about it, to answer some Objections; yet nothing was reduced to Practice in the Case, during that Part of the Trial, in which the Prisoners were but remotely concerned. It may be observed, that *Corker* fell into great Undecencies of Passion against the Witness *Dugdale*; an Argument of Guilt, my old Master would have said; yet no Inferences nor Reproofs upon it. Now I have given a short, yet true Account of what was but

preliminary to *Wakeman's*, and their Trials, I shall go on. Doctor *Oates* proved, that *Wakeman* refused Ten thousand Pounds, as too little for poisoning the King; which he termed so great a Work, and afterwards did undertake it for Five thousand more, as it was written down in the Entry-Book, kept sometimes at *Wild-House*, sometimes at *Langborne's* Chamber: And further, as appeared by the said Entry-Book, there were Five thousand Pounds paid in Part, and a Receipt subscribed *George Wakeman*, which, by a Comparison of Hands, was sworn to be Sir *George's* Hand; which Sir *George* shifted off by the Help of an Apothecary, as he thought well enough; yet granting the Apothecary to say true, which is questionable too, for they are often slippery Chapmen, especially considering former Relations, and future Hopes; and *Oates* to swear true, which no wise Man will dispute, there might be two Letters, which Sir *George* would slur off, from the Improbability of writing two Letters to one thing, and gravely bids the Jury take Notice that he writ but one Letter; he might with the same Modesty have advised them not to believe a Word against him; yet little Notice taken.

The Improbability of writing two Letters to one thing, seemed to weigh something with the Lord Chief Justice; though not so with Justice *Pemberton*, who said, *It might be so, to serve a Turn, very well.*

It was proved likewise by Dr. *Oates*, that *Wakeman* had a Commission to be Physician-General to the new Army; which my Lord Chief Justice had like to have forgotten.

Amongst other Matters, *Bedlow* deposed, That Sir *George Wakeman* came into *Harcourt's* Chamber in a Chase, and told him, he knew not whether he should go on or no. *Harcourt* went to his Cabinet, and took out a Bill, and asked Sir *George* if he was ready; Sir *George* said he was, and had been long since, but they were not punctual with him: But what have you there? A Bill for two thousand Pounds at your Service, replies *Harcourt*. Which Bill Sir *George* accepted, and afterwards told *Bedlow*, that the Goldsmith had allowed of it, and would pay him in the Afternoon. When *Wakeman* objected, it was not likely he should discover so great a Secret upon so small an Acquaintance; *Bedlow* replied, he would have a hundred times more, if *Harcourt*

\* This should be read after *Wakeman's* Trial, Vol. 2. Pag. 957. and is the Pamphlet that *Francis Smith* was tried and convicted for publishing: See his Trial, Vol. 2. Pag. 1036.



had but told him he was his Confident, as he had done then. *Wakeman* rambled out into a Passion, and swore that he never saw him in all his Life: Yet *Bedlow* made it out by Circumstances, that he had taken Physic of him at the *Bath*; and that Acquaintance he did not deny, but called him Rogue, &c. Before the Prisoner call'd his Witnesses, it may be observed, that the Lord Chief Justice said, that *Bedlow*, the second Witness, said no material thing against *Wakeman*, but only some Circumstantial about a Two thousand Pound Bill, but had not said for what, only some Things about the Queen, his Lady and Mistress.

Sir *Robert Sawyer* replied, Under Favour, and began to sum up *Bedlow's* Evidence; so the Lord Chief Justice seemed not pleased, and answered, What is all this? Call Mr. *Bedlow* again. To whom he made a godly Speech about innocent Blood, and bade him give his Evidence anew; who gave what is above said. Sir *George* replied, What if the Queen had given me Two thousand Pounds for my Service done her, is that any Harm? I have deserved it, I am sure, for nine Years Service; yet a little before he made a Protestation before God, he never saw *Bedlow*; a likely Matter, as if an absolute Stranger should come to the Knowledge of such a Money-Circumstance, and agree in the Sum too. *Bedlow* went on, and swore, that *Harcourt* said to Sir *George*, *This must be well followed, and closely observed; because much depends upon it: For if we should miss to kill him at Windsor, or you miss in your Way, then we will do it at Newmarket.* The Lord Chief Justice made *Bedlow* repeat the Words again; which he did, only interposing [*Which we hope you will not*] The Lord Chief Justice replied very modestly, He says now quite another thing; but was contradicted by the Lord Chief Justice *North*, the Recorder, and Sir *Robert Sawyer*, and submitted to it most Christianly. Then *Bedlow* went on, and swore, that Sir *George Wakeman*, in his hearing, declared his Consent; and that it was one entire Discourse: Upon which the Knight, as well he might, said to the Prisoners, *Then is my Business done*; and he had been a true Prophet, if either Wit or Honesty had exercised a due Dominion over the Jury. Now if my old Master *Clodpate* had been on the Bench, he would have hung hard upon that Expression, as also upon Sir *George's* allowing of Two thousand Pounds to be paid for Wages; he would have swaggered it, and have said, This is not to be said to us that know the Methods of the Court, never to pay so much Wages at a time, they always instance such Sums; you might, however, have brought some other Authority besides yourself, which can deserve no Credit here, when it is clear by all Circumstances you invoked God to witness to a Lye, about your never seeing *Bedlow*, within these ten Minutes.

Against *Corker*, *Oates* deposeth, That he saw his Patent from *Rome* to be Bishop of *London*; that he was privy, and did consent to *Langborne's* Proposal to the *Benedictine* Monks, to advance Six thousand Pounds towards carrying on his Design, his Consent being necessary, because he was President; and that *Corker* should say further, that he carried on the Design under the Disguise of bestowing the Queen's Charity; and that he did except against *Pickering* being chosen to kill the King, being that a mere Layman was more proper. Mr. *Marshall* was charged with

the same thing, and that *Marshall* went half with *Conyers*, who laid a Wager that the King would eat no more *Christmas-Pyres*.

*Bedlow* deposed further against *Corker*, That he had heard him discourse about raising an Army, but nothing positively to the Murder of the King. *Bedlow* accused *Marshall* much about that rate; but *Marshall* not being shy of his Lip-labour, fell to impertinent questioning him about his knowing him; but was confuted, (but not at all ashamed in his Lyes,) by Sir *William Waller*, who was sworn in the Case; but *Marshall*, with a Company of soft Words, would have persuaded Sir *William* that he forswore himself; the Priest surely loved to hear himself prattle, to spend so much Time in the wasting of his Credit, about a thing which was not of a Farthing Concern, true or false: Then he asked *Bedlow*, whether he had ever seen him before he was taken; who said, At the *Savoy*. Then with an unheard of Impudence he replied, he would be content to be hanged, if *Bedlow* could prove that he was ever at the *Savoy*. *Bedlow*, though he had none by to prove that, as perhaps he would have been in the same Case if he had been to have proved himself ever to have been in *Westminster-Hall*, as the Lord Chief Justice intimated; yet he did it by a sufficient Circumstance, when he gave Sir *William Waller* Directions where to search for the Gun that was to have killed the King, which was found accordingly. This is now the Substance of what the Prisoners, *Wakeman*, *Corker*, and *Marshall*, were charged with: The other, *Rumley*, had but one Witness against him; so went off on course. Sir *George* now called his Witnesses; the chief was *Chapman* the Apothecary, of which I have given a former Account. Then was his Man *Hunt*, and *Elizabeth Henningham*, called, who talked at the Apothecary's rate; so that *Oates* was not at all contradicted by them, but they might both say true, and that the Chief Justice told them. Then Sir *Philip Lloyd* was call'd upon by Sir *George Wakeman*, to adjust what Dr. *Oates* should say at the Council-Table; who said, but not upon Oath, that when Sir *George* was called in before the Council, and told of his Accusation, he utterly denied all, and did indeed carry himself, as if he were not concerned at the Accusation. Then *Oates* was called in, to tell what he knew further; for as yet he had given but a hear-say Evidence (as my old Master used to term it) he replied with lift-up Hands, God forbid (for I must tell Truth, says Sir *Philip Lloyd*, let it be what it will) that I should say any thing against Sir *George Wakeman*; for I know nothing more against him. *Oates* replied, he knew nothing at all of this. Sir *George* triumphed, and cried, This is a Protestant Witness. Now had old Justice *Clodpate*, my old Master, been upon the Bench, he would have taken up the Knight, and told him, he had given a very officious Testimony; for he was to tell only what *Oates* said at that time, and not to pretend to Skill in Physiognomy; for he was not mealy mouthed, but would upon Occasion have talked his Mind to Knights, or any body, and would have said further, It appears to me, and may appear to any body else, that this Knight has as great a Kindness for Sir *George* as for Truth, and have bidden the Jury observed accordingly; he would not have left there neither, for he would have said, Admit Sir *Philip* says true,

true, and that is as kind to him as can be, what would Sir *George* infer, That Mr. *Oates* is now tied up in his Evidence? By no means, for the Case is no more than if a Man be brought before a Justice of Peace for stealing a Cow, and that Witness makes a solemn Protestation, that he knows no more against him, yet afterwards, upon his Arraignment, swears to a Horse too, in another Bill of Indictment, the former Affirmation is attested by his Worship's Clerk, *quære*, whether that will quit him for the Horse, or ought to be so much as heard in a Court? Besides, here has been a late judged Case, *Whitebread* and *Fenwick's*, the Jury was withdrawn for want of full Evidence, afterwards one of the short Evidences came to swear home, and was admitted, the Prisoners found Guilty, and executed accordingly; if that was right, as no question it was, because practised, as I have been informed, it must be much more in the right now to admit of *Oates* his further Testimony, for the Council-Table is no Court of Record, as this is.

Sir *Thomas Doleman* was called in for *Oates*; who said, that *Oates* at that Time was in great Disorder and Confusion, and as feeble as ever he saw any body in his Life, so as he believed he could not give any body a good Answer; and further said, that *Wakeman* was called in, and gave his Answer, at which the Council was amazed; for he did not in his Opinion deny it so positively as one that was innocent could, but shuffled Matters off with Expressions of the great Loyalty and Services to the Crown of himself and Family, and required Reparation for Injury done. It seems Sir *Philip* and Sir *Thomas* had different Sentiments about Sir *George's* Mien. When Sir *Thomas Doleman* had done, Sir *George*, unbidden, fell into a Repetition of what he had said at the Council-Table in his Defence; which resolved only into a telling what a good Subject he had been for the King, what Work his Brother made at *Worcester*, how his Father lost Eighteen thousand Pounds Estate for the King; how he was in a Plot for the King, was taken at his Apothecary's, some Arms found in the Cellar, carried to Prison, and in much Danger of being hanged; and how his Family was mighty instrumental in the saving of the King, as Colonel *Gifford*, his Cousin *Carlos*; and that the *Pendrels* were menial Servants to the Family.

Then *Corker* was called; who began with a florid Discourse reflecting upon the Witnesses, that they had been Men of scandalous Lives, and that there was no Plot; which he flourished off as well as he could, but not to any reasonable Satisfaction; then he came to trifling about going to *Lamspring* in *Westphalia*, and such other small Matters; but at last he said, he was not President of the *Benedictines*; which was material, had it been well proved, for it obviated Mr. *Oates* his Accusation of consenting to the Six thousand Pounds as President. Then *Marshal* was called to say for himself; who made a great Pother about a white Spot under his Perriwig, and Sir *William Waller's* ordering him to put it off; and many Inferences he would have made; and then made a great Stir about Witnesses that could have come within three Days, and many other Things to no Purpose. Then *Corker* called his Witness, *Nell Rigby*, to prove that he was in the *Savoy* when *Pickering* was taken; and that *Oates* and *Bedlow* did know so much: She likewise averred, that *Stapleton* was President of the

*Benedictines*, and *Corker* never officiated as such; and that she saw Mr. *Oates* once in the House, who came a begging to Mr. *Pickering* for Charity, and that was in the midst of the Plot, as was made out by Circumstance; from whence *Marshal* inferred, It was not likely they should trust him with any thing of that nature, and suffer him to want. This now must be a new Contrivance, for it would have been set up before in *Pickering's* Trial, had there been any thing of Truth in it. I now wonder that none from the Bench set upon that Bitch-Fox, to run down her Testimony; for allow that to be true, the Plot is Nonsuit, *Semel insanivimus omnes*; my old Master would have clawed the Three-penny Baggage, and told her her own, and likewise have broke her Credit with the Jury, by the Circumstances, that it was never before offered; a thing that they could not be so careless in, had the thing been true. Now Mrs. *Sheldon* was called to prove *Stapleton* President of the *Benedictines*; who accordingly did so. Then *Alice Broadhead* did the same.

Then Dr. *Oates* was called again, but never examined; he is wise that can tell why, without somebody was afraid he should have cleared the Point, as it was formerly in another Case about Mr. *Howard's* Son.

Then the Court asked them, if they had done all three? Sir *George Wakeman* fell to a detesting, forswearing, and abominating the Plot, and that he never had a Farthing for any such Thing; *Corker* much at that rate; and *Marshal* made an Harangue, that, had it not been for my Lord Chief Justice *North*, I believe would have lasted till now; it was all full of Protestations of the Innocence of the executed Persons, which were fully answered by the Chief Justice *Scroggs*; who, after some little trifling Velitations with the Priests, summed up the Evidence. In the first he proved, by Mr. *Jennison*, as has been hinted before, that *Ireland* died with a Lye in his Mouth.

Now a Man would wonder what he should urge that for, unless to infer, That if dying Men in their last Breath would lye, why should living Persons be believed under their Circumstances? especially when a Jury is free by the Law to do what they will without Blemish in the Case.

Then the Chief Justice goes on, and sums up *Oates* his Evidence against *Wakeman*; which his Lordship, leaving or forgetting all the material Points, makes only circumstantial: till Sir *Robert Sawyer* put him in mind of his Commission, seen by *Oates*, to be Physician to the new Army; and then his Lordship goes on, and allows that, as likewise that he refused Ten thousand Pounds, and would have Fifteen thousand to do the Work; but, with an unusual Sweetness, leaves the Truth with the Jury, and then falls most religiously into a Declaration against shedding innocent Blood: Which he did so pathetically, as no Man would judge him to be the Son of a Father who, as Moderns say, was not very scrupulous in that Point.

Then he goes on to Mr. *Bedlow's* Evidence; and though he summed it up a little short, yet he makes him a second Witness against *Wakeman*, if the Jury will believe him. Now considering these [I's] were never put before, why the Devil should they now, would old *Clodpaté* have said; and so say I *Tom Tickle-foot*.

And then the Chief Justice prays the Bench in Aid, if he had forgotten any thing material.

Then



Then his Lordship was pleased to say, the Evidence against *Corker* was not full, so as to prove any Fact, but only some Words; and that he was not President of the *Benedictines*, his Lordship affirmed from the Testimony of three Flings, without any manner of Hint to the Jury that they were not upon their Oaths. The Charge against *Marshall*, his Lordship said, was rather less than against *Corker*; and so accordingly lightened it, as became him.

Then he comes to Sir *Philip Lloyd's* Testimony, which he laid as great a Stress upon as it would naturally bear; and, so as to invalidate any further Testimony against Sir *George Wakeman*, his Lordship was pleased to name Sir *Thomas Dolman's* Evidence, but with so little Respect, as he might have as decently let it alone: And to invalidate *Oates* his Testimony further, he takes notice that he was begging, without Intimation to the Jury of any Probability of the Matter, which must utterly destroy Mr. *Oates* for the future; for no body that believes that, can believe any thing he says of the Plot. And then, after a pious Exhortation to the Jury to take care of innocent Blood, he concludes, telling them, That if they believe *Oates* and *Bedlow*, they may do well to find the Prisoners Guilty; otherwise not.

*Bedlow* charged the Chief Justice, for not summing up his Evidence right; who only replied, he knew not by what Authority this Man speaks. I shall only make this Observation upon his Lordship; In all former Trials he went on without the least Hesitation, or running the same over again, as he did not in this; especially about the Concern of innocent Blood: But, by all that's good, it was my old Master *Clodpate's* Disease, Peace be with him, always to sham up an Evidence when any body had been with him the Morning before.

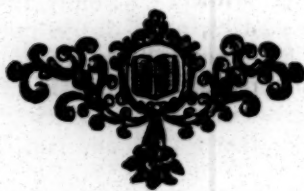
About an Hour after the Jury returned, and brought them in Not guilty; but, according to their abundance of want of Understanding, enquired whether they might not bring them in guilty of Misprision, or no? Now could such a Thing come into their politick Pates, had they

understood what the Word meant? for that implies a knowing of, but not consenting to, a Treason. Now there was no manner of Colour for such a thing; for the Evidence was full, if they believed them, as to absolute Treason; if not, why would they think of any thing but Acquittal? But it may be they knew not the Force of the Word, which led them into that Error; I am sure that's their best Plea; otherwise they must yield themselves to be great Betrayers of their Nation, and lie under a damned Suspicion of being foully practised upon; especially if that be true that runs about in Coffee-houses, That a Gentleman that went out amongst them had a sealed Paper of Fifty Guineas thrust into his Hand.

They say in the North, That a Jury consists of eleven Fools and a Knave: Now those of the South, as being more refined Wits, are of a nobler Confidence, as having more of the Knave in them: for had they had a mind to have examined Matters, and not barely to have acquiesced in outward Appearance, they might have considered, that *Oates* and *Bedlow* did not swear by Practice, like the Boys of St. *Omer's*, from this Circumstance, That *Rumley* had but one Witness against him. Now had Hanging, and not Truth, been the designed Matter, how easy a thing had it been for Captain *Bedlow* to have agreed with Dr. *Oates*, and made up two Witnesses against *Rumley*, is obvious to every considering Capacity, and might have played such a Prank formerly to have served a Turn, when they were listed amongst the Pope's Mamalukes.

It is no small Wonder, I confess, to *Tom Ticklefoot*, that no body from the Bench nor Bar hinted that Circumstance; my old Master *Clodpate* would have been hanged before he would have missed such a Barn-door.

I am more particular in this, to the end that Circumstance of their not combining may induce Juries for the future to look upon them as Men that swear only according to the Dictates of Truth, notwithstanding the sham Tale of the Doctor's begging at *Pickering's*.



N U M B E R   X I X .

*The Lord Chief Justice Scroggs his Speech in the King's-Bench, the first Day of this present Michaelmas-Term, 1679, occasioned by the many libellous Pamphlets which are published against Law, to the Scandal of the Government, and Publick Justice: Together with what was declared at the same Time on the same Occasion, in open Court, by Mr. Justice Jones and Mr. Justice Dolben.\**

**I** Have bound over this Man, *Richard Radley*, to his good Behaviour, and to appear here this Day, for saying false and scandalous Words of me, which are sworn to by two several Affidavits; viz.

**W**illiam Lewis maketh Oath, *That on the seventh Day of August, 1679, there being a Difference between Robert Raylett and Richard Radley, he heard the said Richard Radley say to him the said Raylett, If you think to have the Money you have overthrown me in, go to Weal-Hall to my Lord Scroggs; for he has received Money enough of Dr. Wakeman for his Acquittal.*

Jurat. 4<sup>to</sup> die Septem.                      William Lewis.  
1679, coram me  
Will. Scroggs.

**R**obert Raylett maketh Oath, *That there was a Trial at the last Essex Assizes between him and one Richard Radley, where he recovered Thirty-eight Pounds; and he happening to be at work on the seventh Day of August, 1679, over-against the House of the said Richard Radley, the said Richard Radley told him, If you expect the Money you have overthrown me in, you may go to Weal-Hall; for there is Money enough come in now.*

Jurat. 4<sup>to</sup> die Septem.                      Robert Raylett.  
1679, coram me  
Will. Scroggs.

First, I would have all Men know, that I am not so revengeful in my Nature, nor so nettled with this Aspersion, but that I could have passed by this and more; but that the many scandalous Libels that are abroad, and which reflect upon Publick Justice, as well as upon my private self, make it the Duty of my Place to defend one, and the Duty I owe to my Reputation to vindicate the other.

And having this Opportunity, I think this the properest Place for both. If once our Courts of Justice come to be awed or swayed by vulgar Noise, and if Judges and Juries should manage themselves so as would best comply with the

Humour of Times, 'tis falsely said, That Men are tried for their Lives or Fortunes; they live by Chance, and enjoy what they have as the Wind blows, and with the same Certainty: The giddy Multitude have Constancy, who condemn or acquit always before the Trial, and without Proof.

Such a base, fearful Compliance made *Felix*, willing to please the People, leave *Paul* bound; who was apt to tremble, but not to follow his Conscience. The People ought to be pleased with Publick Justice, and not Justice seek to please the People. Justice should flow like a mighty Stream; and if the Rabble, like an unruly Wind, blow against it, it may make it rough, but the Stream will keep its Course.

Neither, for my part, do I think we live in so corrupted an Age, that no Man can with Safety be just and follow his Conscience: If it be otherwise, we must hazard our Safety to preserve our Integrity.

And to speak more particularly as to *Sir George Wakeman's* Trial, which I am neither afraid nor ashamed to mention, I know that all honest and understanding Men in the Kingdom (speaking generally) are thoroughly satisfied with the impartial Proceedings of that Trial, taking it as it is printed; which was done without the Perusal of one Line by me, or any Friend of mine. Tho', by the way, I wonder by what Authority that arbitrary Power was assumed, to forbid any Friend of mine the seeing of it, before it was put out.

However, as it is, I will appeal to all sober and understanding Men, and to the Long Robe more especially, who are the best and properest Judges in such Cases, as to the Fairness and Equality of that Trial.

For those hireling Scribblers that traduce it, who write to eat, and lye for Bread, I intend to meet with them another Way, for they are only safe whilst they can be secret; but so are Vermin, so long only as they can hide themselves.

And let their Brokers, those Printers and Book-sellers by whom they vend their false and braded Ware, look to it; some will be found, and they

\* To be read after *Sir George Wakeman's* (*Tom Tickle-foot's* Observations) *Marshall's*, and *Rumley's* Trials, in Vol. 2.



shall know that the Law wants not Power to punish a libellous and licentious Press, nor I a Resolution to execute it.

And this is all the Answer is fit to be given (besides a Whip) to those Hackney-Writers, and dull Observators, that go as they are hired or spurred, and perform as they are fed, who never were taught.

If there be any sober and good Men that are misled by false Reports, or by Subtily deceived into any Misapprehensions concerning that Trial, or myself; I should account it the highest Pride, and the most scornful thing in the World, if I did not endeavour to undeceive them.

To such Men therefore I do solemnly declare here in the Seat of Justice, where I would no more lye or equivocate than I would to God at the holy Altar,

I followed my Conscience, according to the best of my Understanding, in all that Trial, without Fear, Favour, or Reward, without the Gift of one Shilling, or the Value of it directly or indirectly, and without any Promise or Expectation whatsoever.

This I say to honest Men (that know me not) if any that do know me needed this, they should not have had it, for they use me ill; he that knows me and doubts, so long thinks it an even Wager whether I am the greatest Villain in the World or not; one that would sell the Life of the King, my Religion, and Country, to Papists for Money: And he that says great Places have great Temptations, has a little, if not a false Heart himself; for no Temptation is big enough for a Sin of this Magnitude.

I would not have the *Papists* now make any false Conclusions from what I say, That because I reprove the Insolence of some Mens Tongues and Pens, concerning this Trial, they should thence infer they have not had, or at least cannot expect fair Play, because some foolish Men cry out of their Acquittal, and think there is no Justice, where there is no Execution.

They have had fair Trials, and some that have suffered have had the Ingenuity to confess it; and they shall still be try'd according to the Evidence, and the Probability and Credibility it carries with it.

But this I must say, he that thinks there is no Plot, is blind with Prejudice, or wilfully shuts his Eyes.

The Priests and Jesuits had a Design to root out the *Protestant* Religion, and bring in *Popery*, and that is directly to overthrow the Government; and to effect this, that they would kill the King. Were there no more, their Doctrine and Practices go very far to prove it; and he that says the contrary, is as much out, as where in a printed Pamphlet he too confidently asserts, That in all their Papers that were searched, there was not one ill Letter found, or any thing that was suspicious. *Coleman's* Letters, and the Letter found amongst *Harcourt's* Papers, will never be answer'd; not by saying, That a Meeting so exactly appointed, with all Cautions imaginable, (as not to appear too much about the Town, for fear of discovering the Design, which in its own Nature requires Secrecy,) that this was only a Meeting to choose an Officer.

And yet to affirm, That this is not so much as suspicious at least, is a Confidence, that the Ingenuity of a Jesuit only will undertake to own.

However, in the mean Time, the extravagant Boldness of Mens Pens and Tongues is not to be endured, but shall be severely punished: For if once Causes come to be try'd with Complacency to popular Opinions, and shall be insolently censured if they go otherwise, all publick Causes shall receive their Doom as the Multitude happen to be possessed; and at length every Cause shall become publick, if they will but espouse it; at every Sessions the Judges shall be arraigned, the Jury condemned, and Verdicts over-awed to comply with popular Noise, and undecent Shouts.

There are a sort of Men, I doubt, that too much approve and countenance such vulgar Ways, and count it Art and Stratagem; that embrace all Sorts of Informations, true or false, likely or impossible, nay, though never so silly and ridiculous, they refuse none: So shall all Addresses be made to them, and they be look'd on as the only Patrons of Religion and Government, though they should have but little of the one, and would maintain the other only so far as their own Share in it comes to.

These Sir Politicks (if such there are) deceive themselves as much as they do others, and are not what they imagine themselves to be, with understanding and honest Men; no not with those they think they gull neither, for they use them to serve their Purposes, as they think they serve others; and if ever Time shall serve, 'twill prove so.

Let us pursue the Discovery of the Plot, in God's Name, and not baulk any Thing, where there is Danger or Suspicion upon reasonable Grounds; but not so over-do it, as to shew our Zeal: We will not pretend to find what is not, nor stretch one Thing beyond what it will bear, to reach another; nor count him a Turn-coat, and not to be trusted, that will not betray his Conscience and Understanding, that will not countenance unreasonable Boldness, nor believe incredible Things, lest we fall into what we justly condemn in the *Papists*, Cruelty, and vain Credulity: Such Courses cannot be the Result of honest Intentions, but shrewdly to be suspected rather a Disguise, in pursuing one Villany to commit another.

For my own Part, without any other Meaning or Reservation whatsoever, I freely and heartily declare, I will never be a *Papist*, nor a Rebel; but will, to my Power, suppress *Popery* as an open Enemy, and Faction as a secret one.

No Act of Oblivion ought to make us to forget by what Ways our late Troubles began, when the Apprentices and Porters mutinied for Justice, in their own Sense. And though I am morally certain, that no such Effect will follow as did then, yet the like Insolence ought not to be suffered for the Example past, and to come.

The City of *London*, I mean the Lord Mayor and Aldermen, and generally all Men of Value and Worth there, I think in my Conscience, are at this Day as loyally and religiously disposed to defend the King and the Government, and maintain the true *Protestant* Religion to their utmost, as any former Age whatsoever can shew; and I know the King thinks so too, and is therefore really and heartily as kind to them.

And therefore, though our Jealousies may be many, our Fears need not be so: For whosoever they are that design Disturbances, and publick Dissentions, for private Ends, will find they are rather

rather troublesome than dangerous; and the greatest Mischief they will be able to effect, will be upon themselves.

In short, it is the proper Business of this Court, and our Duty, that fit Judges here, to take care to prevent and punish the Mischiefs of the Press.

For if Men can, with any Safety, write and print whatever they please, the *Papists* will be sure to put in for their Share too: So that what between them, and the Factious, and the Mercenaries that write for him that hires, and for what they are hired, we shall be infected with the *French* Disease in Government, and be over-run with Lyes and Libels; which agrees neither with *Englishmen's* Honesty, nor Courage, who were wont to scorn to say what they durst not own.

Mr. Justice JONES.

WE have a particular Case here before us, in a Matter of Scandal against a great Judge, the greatest Judge in the Kingdom, in Criminal Causes; and it is a great and an high Charge upon him. And certainly there was never any Age, I think, more licentious than this, in aspersing Governors, scattering of Libels and scandalous Speeches against those that are in Authority; and without all doubt, it doth become this Court to shew their Zeal in suppressing it.

I am old enough to remember (and, perhaps, feel the Smart of it yet) the Beginning of the late Rebellion, (for a Rebellion it was, and deserves no other Name.) I know it had the Fore-runner of such Libels, and Scandals against the Government, as this is; and it follow'd almost to the Subversion of the Happiness of the King-

dom. As for the Trial hinted at in this Affidavit, I was not present at it myself, I was detain'd by my usual Infirmary, so that I could not attend that Service; nor indeed have I read the Relation of it in Print, so considerably as to give a Judgment upon it: But I am very confident, (upon my Knowledge of the Integrity of my Lord, and the rest of my Lords the Judges that were there, for there were all the Chief Judges, and almost all my Brothers) that that Trial was managed with exact Justice, and perfect Integrity, by them.

And therefore I do think it very fit, that this Person be proceeded against by an Information, that he may be made a publick Example to all such as shall presume to scandalize the Government, and the Governors, with any false Aspersions or Accusations.

Mr. Justice DOLBEN.

I Am of that Mind, truly; and am very glad we have lit upon one of the Divulgers of these Scandals. I was present at that Trial, and for my Part, I think the Scandal to my Lord Chief Justice was a Scandal to us all that were there; for if he had misbehaved himself in such a Manner as some have reported, we had been strange People to sit still and say nothing, or not interpose to rectify wherein he did amiss: And therefore I desire this Man may be proceeded against, for an Example to others.

May 29, 1680, this *Richard Radley* was convicted of speaking scandalous Words against the Lord Chief Justice *Scroggs*, and fined 200 l.



## N U M B E R XX.

*Mr. Thwing being condemn'd at the Summer Assizes at York,\* and after three Months Reprieve, was at last, viz. October 23 next ensuing, Hang'd, Drawn, and Quarter'd, at the usual Place of Execution there: Arriving at the Gallows, he deliver'd in Writing this following Speech.*

THIS sudden News of my Execution (after my Reprieve) coming so unexpectedly, made me fear I should have more Severity shew'd me than has been to others; and consequently, that I should not have my full Liberty to declare my Mind in the Place of my Execution; therefore I have briefly express'd myself in Writing, as followeth.

First, As I hope for Salvation and Benefit of the Blood and Passion of my Blessed Saviour, I most sincerely protest, that what *Rob. Balron*, and *L. Mowbray* swore against me, was absolutely false; for here, in the Presence of the Eternal God, I declare I never knew of any Consult at *Barnbow*, the least prejudicial to the King or King-

dom; nor was I ever at any such Consult, or Meeting, with *Sir Thomas Gascoign*, *Mr. Gascoign* his Son, *Sir Miles Stapleton*, the Lady *Tempest*, *Mr. Ingleby*, or any other, where any thing was treated, spoken, or written, about killing the King, or Alteration of the Government; nor did I ever see, or know of any List of Names of Persons mention'd, and sworn by them against me.

Secondly, Upon my Salvation I declare, that I never have been in my whole Life-time guilty, even so much as in Thought, of any Treason against his Majesty, or the Kingdom; being directly contrary to the Principles of our Faith.

Thirdly, That although I have, and do declare against the Oath of Allegiance, as it is

\* This to be read after his Sentence in Vol. 3. Pag. 89.



worded, yet it is only by reason of some Clauses therein contain'd, not pertaining to Allegiance; and therefore if an Oath, containing nothing but Allegiance, had been legally tender'd me, I should have thought it a Sin to refuse it.

Lastly, I acknowledge myself a Priest, and to have (about Fifteen Years) perform'd the Priestly Function; which I am so far from denying, that I thought it the greatest Honour imaginable.

Now, dear Countrymen, having made this Protestation in the most plain and serious Terms I could, without all Equivocation, or mental Reservation whatsoever; I appeal to the Eternal Judge, whether all good Christians ought not

rather to believe what is here in this manner sworn by me, in my present Circumstances, than what was sworn by my Accusers, whom, notwithstanding, I beg of God Almighty to forgive; as also the Jury, and all others, who have, in any kind, concurr'd to my Death.

Then again professing his Innocence, and praying for his King and Country, he concluded with these seeming Prophetick Words:

Though I know the Affairs of the Kingdom are in a bad Posture, yet I hope they will be clear'd e'er long; and then the Actors thereof will be more fully known.



## NUMBER XXI.

*The Examination of Captain William Bedlow, deceased, relating to the Popish Plot; taken in his last Sickness, by Sir Francis North, Chief Justice of the Court of Common-Pleas. Together with the Narrative of Sir Francis North, at the Council-Board: And the Letter of Sir Francis North, to Mr. Secretary Jenkins, relating to this Examination. Perused and sign'd to be printed, according to the Order of the House of Commons, by me William Williams, Speaker.\**

*The Examination of Capt. William Bedlow, taken upon Oath before the Lord Chief Justice North, at Bristol, on Monday the 16th of August, 1680.*

THE Examinant saith, That the Duke of York hath been so far engaged in the Plot, as he hath seen by Letters in Cardinal Barbarini's Secretary's Study, that no Part that hath been proved against any Man already, that hath suffer'd, but that to the full those Letters have made him guilty of it; all but what tended to the King's Death. And at Rome I asked Father Anderton, and Father Lodge, two Jesuits, What would the Duke do with his Brother when he was King? and they answer'd me, They would find a Means for that; they would give him no Trouble about it. Then I told them, I believed the Duke loved his Brother so well, he would suffer no Violence to be done to him: They said, No; if the Duke could be brought to that, as he had been religiously to every thing else, they might do their Work; their other Business was ready; and they might do it presently. But they knew they could not bring him to that Point, but they would take care for that themselves. They had not begun with him, to leave him in such Scruples as that, but they would set him into his Throne, and there he should reign blind-

fold three or four Days; for they had settled some they should pitch the Action upon, should clear their Party, and then he should lie upon them with the Sword of Revenge.

And this Examinant doth further add, That the Queen is not, to this Examinant's Knowledge, nor by any thing that he could ever find out, any way concern'd in the Murder of the King, but barely by her Letters consenting and promising to contribute what Money she could to the introducing the Catholick Religion. Nay, 'twas a great while, and it made her weep, before she could be brought to that.

*William Bedlow.*

*Jurat. 16 die Aug. 1680.*

*Coram me,*

*Fra. North.*

*The NARRATIVE of Sir Francis North, Lord Chief Justice of the Common-Pleas, at the Council-Board.*

AT my first coming to Mr. Rumsey's House, where I was to lodge at Bristol, upon Monday the 16th Day of August in the Afternoon, being the first Day of the Assizes, Sir John Knight came to me, and said, That Mr. Bedlow lay dangerously ill of a Fever, and had little Hopes of Life; and desired that I would give him a Visit,

\* Bedlow having been so remarkable a Witness in the several Trials of the Popish Plot, it is thought proper to insert here what he declared upon Oath to the Lord Chief Justice North, four Days before his Death, (which happen'd August 20, 1680,) which should be read after those Trials, in Vol. 2.

that he might impart something of great Consequence to me before his Death. I told him, I would give him a Visit that Night after Supper, about Nine o'Clock, if I might be satisfy'd of two Things: First, That there was no Infection in his Distemper: Secondly, That the Time would not be inconvenient, but he might discourse to me without Prejudice to his Condition. After a little while, two Physicians came to me, and assured me, that there was no Danger of Infection; and that the Time I had appointed would be most proper; for commonly he took his Repose in the Afternoon, and at Nine o'Clock he would, in all Probability, be refreshed, and fit to discourse with me. Thereupon, I declared my Resolution of going, and desired the Company of the Two Sheriffs, and my Brother Roger North, and appointed my Marshal *William Janes* to go with me. As we were upon the Way, Mr. *Croftman*, a Minister in that City, told me, Mr. *Bedlow* had desired him to come with me to him: I said, It was very well, and I should be glad of his Company. Whereupon, we went all together; and being come into the Room where Mr. *Bedlow* lay, I saluted him, and said, I was extreme sorry to find him so ill; I came to visit him upon his own Desires: I did imagine he had something to impart to me, as a Privy-Counsellor, and therefore if he thought fit, the Company might withdraw. He told me, That needed not yet, for he had much to say, which was proper for the Company to hear: And having saluted the Sheriffs, and Mr. *Croftman*, he discoursed to this Purpose.

That he looked upon himself as a dying Man, and found within himself that he could not last long, but must shortly appear before the Lord of Hosts, to give an Account of all his Actions. And because many Persons had made it their Business to baffle and deride the Plot, he did, for the Satisfaction of the World, there declare upon the Faith of a dying Man, and as he hoped for Salvation, That whatever he had testified concerning the Plot, was true; and that he had wronged no Man by his Testimony, but had testified rather under than over what was Truth; that he had nothing lay upon his Conscience upon that Account; that he should appear cheerfully before the Lord of Hosts, which he did verily believe he must do in a short Time. He said, He had many Witnesses to produce, who would make the Plot as clear as the Sun; and he had other Things to discover, which were of great Importance to the King, and the Country. Hereupon, he making some Pause, I told him, The Plot was so evidently made out, that no reasonable Man, no *Protestant*, I was sure, could doubt of the Truth of it: But he ought not to have concealed any thing that concerned the King so highly; he ought to discover his whole Knowledge in Matters of Treason, that Traitors may be apprehended and secured, who otherwise may have Opportunity to execute their treasonable Designs. To this he replied, That much of that which he had not discovered, was to corroborate his former Testimony; that he had concealed nothing that was absolutely necessary to the King's Preservation; that he thought it not fit to accuse more Persons, till he had ended with those whom he had already accused. He expressed great Grief and Trouble at the Condition of his poor King and Country, (so he termed them) whom he knew

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at that Time to be in imminent Danger from the Jesuits, who had resolved the King's Death; and he was sure they would spare him no longer than he continued to be kind to them. He said, He was privy to their Consultations at *Salamanca* and *Valladolid*, where they used to observe the favourable Conjunction they had, to introduce their Religion into *England*; which consisted in their having a Head, who must be set up, whatever came of it; and, if they let slip that Opportunity, they should never have such another; for without a Head they could do nothing. He said further; He knew the Wickedness and Resolution of the Jesuits; they stuck at nothing to compass their own Ends: They had attempted to poison him, but he had escaped.

When he had finished this Discourse, (which lasted about a quarter of an Hour) I asked him, If the Company should now withdraw? and he said, Yes; and ordered his Nurses to go out, and only his Wife to stay to tend him: And thereupon, all went out, saving Mrs. *Bedlow*, myself, and my Servant *William Janes*. Then I told him, I thought it convenient that what he should then say unto me, should be upon Oath: He replied, That it was necessary it should be so; and called for a Bible; but my Servant having brought a Book with him, administered the Oath to him; and laying his Paper upon a Chair by the Bedside, writ down his Deposition as he delivered it.

When Mr. *Bedlow* had concluded, and said, That was all he had to inform me of, I took the Paper, and read it over distinctly to him, and he approved it, and signed it, laying the Paper upon a Pillow.

I thought it not fit, considering his Condition, to perplex him with Questions, but took his Information as he offered it, and held no Discourse with him when the Company was withdrawn, but concerning the true setting down his Depositions; and when he seemed to be weary, to mind him of taking Cordials, which his Wife reached to him as he desired them.

The next Day, Mr. *Bedlow's* Brother came to me, and told me, that his Brother desired a Copy of the Deposition he made before me: But I told him, I had well consider'd it, and could not give him a Copy; without the King's Leave; but I would move the King in it, and if he gave Leave, I would take Care to send one to him: And Mr. *Bedlow's* Brother then told me, That it was his Brother's Desire that I should represent to His Majesty his Condition, and that his Sickness was very chargeable; and move His Majesty on his Behalf for some Supply of Money for his Subsistence; which I promised to do.

*This is all that I can recollect of what passed upon this Occasion, and is in Substance true; but the very Words, or the Order, I cannot positively remember.*

FRA. NORTH.

*To the Right Honourable Sir Lyonell Jenkins, one of His Majesty's Principal Secretaries of State.*

S I R,

" I Always intended to write from hence, to  
" I pay my Thanks for the whole Circuit,  
" which was much more pleasant, by your Favour of holding Correspondence with me. But  
" now



“ now I have Business of some Importance : For  
 “ as soon as I came to this City, I received a  
 “ Message from Mr. *Bedlow*, by Sir *John Knight*,  
 “ that he being very ill, and, in the Judgment of  
 “ Physicians, in great Danger of Death, had  
 “ some Business of great Moment to impart to  
 “ me. I knowing the Man, and the Season, would  
 “ not refuse the Pains to give him a Visit; and  
 “ being satisfied by Physicians, that there was no  
 “ contagious Quality in his Distemper, (though I  
 “ did not much fear it,) I went well accompa-  
 “ nied; and in the Presence of the Company he  
 “ declared, That whatever he had said relating  
 “ to the Plot, was true; and he being a dying  
 “ Man, had nothing lay upon his Conscience  
 “ upon that Score. The greatest Trouble he  
 “ had, was the Danger the King (whom he loved  
 “ above all Things) was in from the *Papists* at  
 “ this Time, who would attempt his Life as soon  
 “ as ever he should cease to be kind to them;  
 “ and many other Expressions of this kind.

“ After this, I ask'd, if he had any thing to im-  
 “ part to me in private : He told me, he had.  
 “ And having made the Company withdraw, all  
 “ but my Clerk, I took the enclosed Examina-  
 “ tion upon Oath. You may imagine I was not  
 “ curious to perplex him with Questions : I took  
 “ it just as he deliver'd it. Of what Signification  
 “ it will be, I leave to wiser Men. I think my  
 “ Duty is to send it to you, that you may inform  
 “ His Majesty of the Truth. I shall wait upon  
 “ you at *Windsor*, upon *Sunday* next, to receive  
 “ your further Commands.

Your most humble and  
 faithful Servant,

FRA. NORTH.

*Ten at Night. The Copy  
 enclosed is hastily and  
 ill taken. I shall bring  
 the Original with me.*



## NUMBER XXII.

*The humble PETITION of the Lord Mayor, Aldermen,  
 and Commons of the City of London, in Common-Council  
 assembled, as it was presented to His Majesty in Council at  
 Windsor, upon Monday the 18th of June, 1683. Together  
 with the Lord Keeper (North's) Speech. \**

*[ Published by His Majesty's special Command. ]*

To the KING's Most Excellent MAJESTY :

The humble PETITION of the Lord  
 Mayor, Aldermen, and Commons of the City  
 of *London*, in Common-Council assembled :

Sheweth,

**T**HAT Your Petitioners are heartily, and most  
 unfeignedly sorry for the Misgovernment of  
 this Your City, of late Years, whereby the  
 Citizens have fallen under Your Majesty's Displea-  
 sure; which occasioned a Quo Warranto to be  
 brought against them; upon which Judgment hath  
 been pronounced for the Seizure of their Liberties and  
 Franchises into your Majesty's Hands.

That Your Petitioners are deeply sensible of, and  
 thankfully acknowledge the great Favour of this  
 Opportunity of Application to Your Royal Grace,  
 vouchsafed them by Means of Your Majesty's not  
 requiring Judgment to be immediately entered there-  
 upon.

And now, considering this our distressed Condi-  
 tion, we humbly cast ourselves at Your Royal Feet;

*imploping Your Princely Compassion and Grace, to be  
 extended to this Your antient City; most humbly beg-  
 ging Your Majesty's Pardon for all our Offences.*

And we do, in the Name of ourselves, and  
 all the Citizens, humbly tender, and pray  
 Your Majesty to accept the most solemn  
 Promises and Assurances of constant Loy-  
 alty and Obedience to Your Majesty,  
 Your Heirs and Successors, and of our  
 regular and dutiful Administration of  
 Your Government of this City, for the  
 future : Wherein we submit ourselves to  
 Your Majesty's good Pleasure; and hum-  
 bly beg Your Majesty's Commands and  
 Directions, which we will with all Humi-  
 lity and Thankfulness obey.

*And Your Petitioners shall ever pray.*

*After the reading of which Petition, the Lord  
 Mayor, Aldermen, and Citizens, were commanded to  
 withdraw; and being again call'd in, the Lord Keeper  
 spake to them, as followeth.*

\* This Petition, Speech, &c. tho' so material, is omitted in the Proceedings on the *Quo Warranto*; and should be read before the Entry of the Judgment, in Vol. 4. Pag. 851.

*My Lord Mayor,*

I Am, by the King's Command, to tell you, That he hath consider'd the humble Petition of the City of London, where so many of the present Magistrates, and other eminent Citizens, are of undoubted Loyalty and Affection to his Service; that, for their sakes, His Majesty will shew the City all the Favour they can reasonably desire.

It was very long before His Majesty took Resolutions to question their Charter: It was not the seditious Discourses of the Coffee-Houses; the treasonable Pamphlets and Libels daily published, and dispersed thence into all Parts of the Kingdom; the outrageous Tumults in the Streets; nor the Affronts to his Courts of Justice, could provoke him to it.

His Majesty had Patience until Disorders were grown to that Height, that nothing less seem'd to be design'd, than a Ruin to the Government, both of Church and State; for the factious Party were not content with the Practice of these Insolencies, but endeavour'd to have them publicly countenanced by the Magistrates: And for that End, in all Elections they stickled to chuse the most disaffected into Offices of the greatest Trust in the Government; and carried themselves with that Heat and Violence, that it was a Terror to all sober and discreet Citizens: And the City was so unhappily divided into Parties, that there was no Likelihood it could return to good Order, so long as the Factious retain'd any Hopes of procuring the Election of Magistrates of their own Party, for their Impunity.

It was high Time to put a Stop to this growing Evil. This made it necessary for His Majesty to enquire into their Abuse of Franchises, that it might be in his Power to make a Regulation, sufficient to restore the City to its former good Government.

It was not for Punishment, but meerly for the Good of the City, that he took this Course.

And now the King hath obtained Judgment in a *Qua Warranto*, it is not his Intention to prejudice them, either in their Properties, or Customs. Nay, lest the entering a Judgment upon Record might have Consequences fatal to them, His Majesty was so tender of them, that he caused Mr. Attorney to forbear the same at present, that the City might have some Time to consider their own Condition.

*My Lord,*

I must needs say, the City hath not been well advised, to defer their Application to His Majesty thus long, even till the Court hath pronounced Judgment: It had been done with a much better Grace, if it had been more early.

His Majesty's Affection to the City is too great to reject their Suit for that Cause.

But for that Reason you will have the less Time to deliberate upon the Particulars the King doth require of you.

And indeed there will be little need of Deliberation; for His Majesty hath resolved to make the Alterations as few and as easy as may be, consistent with the good Government of the City, and Peace of the Kingdom. They are these:

*His Majesty requires your Submission to these Regulations.*

That no Lord Mayor, Sheriff, Recorder, Common Serjeant, Town-Clerk, or Coroner of the City of London, or Steward of the Borough of Southwark, shall be capable of, or be admitted to the Exercise of their respective Offices, before His Majesty shall have approved them under his Sign Manual.

That if His Majesty shall disapprove the Choice of any Person to be Lord Mayor, and signify the same under his Sign Manual, to the Lord Mayor, or, in Default of a Lord Mayor, to the Recorder, or Senior Alderman; the Citizens shall, within one Week, proceed to a new Choice. And if His Majesty shall, in like Manner, disapprove the second Choice, His Majesty may, if he so please, nominate a Person to be Lord Mayor for the ensuing Year.

If His Majesty shall in like Manner disapprove the Persons chosen to be Sheriffs, or either of them, His Majesty may appoint Persons to be Sheriffs for the ensuing Year, by his Commission, if he so please.

*Nevertheless, the Elections of these Officers may be according to the antient Usage of the City, with these Restrictions.*

The Lord Mayor, and Court of Aldermen, may, with Leave of His Majesty, displace any Alderman, Recorder, Common Serjeant, Town-Clerk, Coroner of the said City, and Steward of the said Borough.

Upon Election of any Alderman, if any of the Persons that shall be presented to the Court of Aldermen by the Ward, shall be adjudged unfit, upon such Declaration by the said Court, the Ward shall proceed to the Choice of other Persons in the room of such, or so many of them as are so disapproved: And if the said Court shall disapprove such second Choice, they may appoint any others in their Room.

The Justices of the Peace to be by the King's Commission, which His Majesty will grant according to the usual Method; unless upon extraordinary Occasions, when His Majesty shall think it necessary for his Service.

These Matters are to be settled in such a Manner as shall be approved by his Majesty's Attorney and Solicitor General, and Council learned in the Law.

*My Lord Mayor,*

These Regulations being made, His Majesty will not only pardon this Prosecution, but confirm your Charter in such Manner as may be consistent with them.

The City ought to look upon this as a great Condescension on His Majesty's Part; it being in the Nature of a Reservation of a small Part of what is already in his Power, by the Judgment: And of those Things which will conduce as much to their own Good and Quiet, as to his Service.

If the City should look upon it with another Eye, and neglect a speedy Compliance; yet His Majesty hath done his Part, and demonstrated his Affection to the City, by giving them this Opportunity.

And



And if there shall be any heavy Consequence of this Judgment, which it will behove you well to consider, the Fault will lie at their Doors, in whose Power it now is, to bring this Affair to a happy Conclusion.

*My Lord Mayor,*

The Term draws towards an End, and *Midsummer-Day* is at Hand, when some of the Officers use to be chosen, whereof His Majesty will reserve the Approbation; therefore it is His Majesty's Pleasure, that you return to the City,

and consult the Common-Council, that he may speedily know your Resolutions thereupon, and accordingly give his Directions.

That you may see the King is in earnest, and the Matter is not capable of Delay, I am commanded to let you know, he hath given Order to his Attorney General to enter up Judgment on *Saturday* next, unless you prevent it by your Compliance in all these Particulars.

*But the City not complying, Judgment was enter'd.* Vide Vol. 4. Pag. 851, 852.



## NUMBER XXIII.

*An ANTIDOTE against Poison: Composed of some Remarks upon the Paper printed by the Direction of the Lady Russel, and mentioned to have been delivered by the Lord Russel to the Sheriffs, at the Place of his Execution. \**

[ *By Sir Bartholomew Shower.* ]

THE publishing of this Paper, as the last Speech of a dying Man, cannot but surprize all Persons who were present at the Trial of the Lord *Russel*, to read such Reflections upon the Judges, the King's Council, the Sheriffs, and the Jury; the Fact so untruly represented, and the Offender's Innocence so strongly asserted, when they can all attest to the Fairness of his Trial, the respectful treating of him by the King's Council, as far as was consistent with their Duty, without any Strains upon the Evidence, to the favourable Demeanor of the Court towards him, not in the least aggravating the Crime beyond the Evidence, and to the Fullness of the Evidence upon the Proofs produced: And therefore, those who heard the Evidence, must acknowledge, that that Paper is so far from containing the whole Truth of the Lord *Russel's* Case, that what of Fact is therein inserted, is wholly disguised, and untruly, and unfaithfully set down. Neither doth the Lord *Russel*, in his Speech to the Sheriffs, aver all contain'd in that Paper to be true, nor the Paper to contain the whole Truth of his Case; only saith, he had set down in that Paper all that he thought fit to leave behind him. No doubt, he might as well have said, All that his faithful Confessor advised him to leave behind him.

For whosoever strictly peruseth the Paper, will not find the Ingenuity, Sincerity, or plain Style of a dying Gentleman, but may discover the peculiar Dialect of an Artist, accusom'd to shadow Truth with doubtful and ambiguous Expressions;

and the Paper artificially contrived and design'd, to gratify a Party, by a colourable asserting the Innocency of the Criminal, condemn'd by the Law for High Treason, and laying a malicious Imputation upon the Government, for an unjust Prosecution of an innocent Person to Death.

Whether the Paper doth truly state the Crime, upon the Fact proved, for which the Lord *Russel* was condemn'd; and whether it contain any plain Denial of that Fact; will best appear by truly stating the Crime charged upon him by the Indictment, and the Fact proved upon him at his Trial.

The Lord *Russel*, with others, are charged by the Indictment with High Treason, for conspiring, compassing, and imagining the Death and Destruction of the King, and raising of a Rebellion within the Kingdom.

And the Overt Acts wherewith they are charged, are their meeting together, consulting and agreeing to raise an Insurrection and Rebellion, and to seize upon the King's Guards.

At the Trial, Colonel *Rumsey* did swear, That there was a general Rising intended in *October* and *November* last, and that he was engaged therein: And that the Earl of *Shaftsbury*, who was likewise engaged therein, in *November* last, acquainted him, that the Duke of *Monmouth*, the Lord *Gray*, Lord *Russel*, Sir *Thomas Armstrong*, and Mr. *Ferguson*, were to meet at Mr. *Shepherd's* House in *Abchurch-Lane*, and sent him thither with a Message to them; that accordingly he went thither, and found the Lord *Russel*, and the

\* To be read after Lord *Russel's* Speech, Vol. 3. Pag. 668, 669, and 670. It is observable, That in the *State Trials*, Vol. 3. Pag. 673. is inserted *Sir Robert Atkins's Defence of the late Lord Russel's Innocency: By way of Answer or Confutation of a Libellous Pamphlet, entituled, An Antidote against Poison.* But the *Antidote* itself (willfully) I suppose omitted.

rest there, and delivered to them the Message from the Earl of *Shaftsbury*; which was, That it was high Time to come to some Resolution about the Rising: That Answer was returned, that Mr. *Trenchard* had assured them, that in four Hours Time, one Thousand Foot, and two or three Hundred Horse, should be ready at *Taunton*. But now Mr. *Trenchard* required two or three Days Notice of the Rising, and therefore they could not go on at present; and that my Lord *Shaftsbury* must be contented.

He said, The Answer was pronounced by Mr. *Ferguson*, and the Lord *Gray* spoke to the same Purpose: And being interrogated, whether the Lord *Russel* were so near as to hear the Message, he said he was so near, and could not but hear it. And being asked by the Lord *Russel*, whether he consented to the Answer, he declared upon his Oath, that the Lord *Russel* did consent; and that they then treated and consulted of the General Rising: And both Colonel *Rumsey* and Mr. *Shepherd* did swear, That the Lord *Russel*, and the rest, did consult as Mr. *Shepherd's*, about seizing of the King's Guards. And having at a former Meeting appointed some of their Number, viz. the Duke of *Monmouth*, Lord *Gray*, and Sir *Thomas Armstrong*, to view in what Posture the Guards were, they made Report to the rest there, That they found them very remiss in their Duties, and might be easily seized. Mr. *Shepherd* swore, That their Meeting at his House was not casual, but appointed by themselves; and that they came late in the Evening; and that my Lord *Russel* mention'd not any private Business to him; neither had he then any private Business with the Lord *Russel*. But the Lord *Russel* pretending he came to taste some Sherry, which he had bespoke of Mr. *Shepherd*, Mr. *Shepherd* denied upon his Oath, that the Lord *Russel* had bespoke any Sherry of him, or mention'd any such Thing then to him.

The Lord *Howard* gave in Evidence upon his Oath, That there was a Design of a General Rising, both in *October* and *November* last; and that the Earl of *Shaftsbury* then acquainted him, he had Ten thousand brisk Boys ready. And after the Departure of the Earl of *Shaftsbury*, it was thought necessary, for the preventing of Confusion, and more orderly managing of the Rising, that a select Council should be held for that Purpose: And accordingly, the Duke of *Monmouth*, the Earl of *Essex*, the Lord *Russel*, Colonel *Sidney*, Mr. *Hambden*, Junior, and himself, met in *January* last, at Mr. *Hambden's* House, in *Russel-Street*, and debated certain Preliminaries to the Rising. Amongst others, Whether the Rising should be in *London* first, or in the Country first, or in both at once; and the major Opinion inclined to have the Rising both in *London* and the Country at one Time. That soon after, they held a second Meeting at the Lord *Russel's* House; where all the last mentioned Persons were present, and where they again debated of the Rising, and then came to this Resolution, That some Person should be sent into *Scotland*, to invite some Persons thence, from the discontented *Scots*, to treat with them, that they might be assured of what Assistance they might expect from the *Scots*: That that Matter was committed by them to the special Care and Conduct of Colonel *Sidney*: And that Colonel *Sidney* acquainted him, he had sent *Aaron Smith* into *Scotland* accordingly; and that he had given him threescore Guineas to defray the Charges of his Journey.

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The Lord *Howard* interrogated by the Lord *Russel*, Whether he said any thing in those Debates, declared upon his Oath, That though his Lordship never used to speak much, yet he did speak in those Debates, and consented to what was done.

This was the Substance of the Evidence, tho' delivered by the Witnesses more at large, as will appear by their Depositions, printed with the Trial. A clearer Evidence to prove the Facts charged, of Meeting and Consulting to raise a Rebellion within the Kingdom, and to seize the King's Guards, I believe the most experienced Person in the Laws can never shew was ever produced at the Trial of any Traitor. To the greatest and strongest Part of the Evidence, which is that of the Lord *Howard*, and so much of Colonel *Rumsey's*, which relates to the General Rising, of which the Witnesses make full Proof, the Paper gives no Answer at all. With what Confidence then can the Author of that Paper introduce a dying Man, asserting his own Innocence, and charging the Jury with Forwardness and Injustice, when the Criminal cannot deny the Facts upon which the Jury gave their Verdict? But these Facts, whether true or false, the Criminal would not examine. And if he could not, or would not assert them to be false, no Man, of any common Ingenuity, can doubt them to be true, when sworn by credible Witnesses, and found by a substantial Jury. Yet, to satisfy the Conscience of a dying Man, and to cover the Scandal of so great a Crime from vulgar or partial Eyes, these Consultations and Conspiracies to raise a Rebellion, and foment a General Rising, are represented to the People only as some Discourses about some Stirs. They may be in *Scotland* some Stirs, but in *England* they are, and ever were stiled Rebellion.

As to the other Branch of the Overt-Acts, of Consulting to seize the Guards, which the Paper makes the only Crime for which the Lord *Russel* was condemned; this Account is given by the Paper, That the Lord *Russel* was at Mr. *Shepherd's* House with that Company but once, and there was no Undertaking then of securing and seizing the Guards, nor none appointed to view or examine them: Some Discourse there was of the Feasibleness of it, and several Times by Accident in general Discourse elsewhere.

This Account which the Lord *Russel* gives of this Matter, is rather a Confirmation of the Testimonies of Colonel *Rumsey* and Mr. *Shepherd*, than an Avoidance thereof: He admits the Feasibleness thereof was then discoursed of, and at other Times likewise. They swore, That the Persons appointed to view the Guards, reported then, they found them to be very remiss in their Duties, and might be easily seized. The Lord *Russel* remembers he was at Mr. *Shepherd's* House but once; *Shepherd* swore he was there with that Company twice, and at the last Time the Report was made after viewing of the Guards.

The seizing of the Guards was not the only nor principal Fact upon which the Lord *Russel* was condemned; as appears by the Proof stated; but it was one of the Instances to make out against him the general Design of raising a Rebellion, as one of the properest Ways to secure the general Rising, and was sufficiently proved by two Witnesses to have been consulted upon to that Purpose.

Indeed, to what other Purpose can any Man imagine the Lord *Russel*, and his Accomplices,



who appeared to have been engaged in a Design of a general Insurrection, upon such Proof as the Criminal could not deny the Fact, should so often discourse of the Feasibleness of securing the Guards, as is confessed by the Lord *Ruffel*, than in order to facilitate and secure their Design of the General Rising? And the Discourse the Paper owns to have been at the Lord *Shaftsbury's*, touching the same Matter, who throughout appears to be a principal Agent in the Design of the General Rising, proves the seizing of the Guards to be Part of that Design. And though the Lord *Ruffel* then expressed a Tenderness of shedding cold Blood, as a Thing detestable, and so like a Popish Practice; yet that Deluge of Blood which must necessarily have ensued in the Heats of a General Rising, which is evident he pursued to his last, did not at all affect him, because this might become any heroick Christian drawn in Armour by the Pencil of the Author of *Julian*; and is not unlike to the Practices of the ancient Christians, so shamefully disguised by the same Author.

If then the Facts whereof the Lord *Ruffel* was found Guilty by the Jury, upon such pregnant Proof, be so evident, how is it possible for a dying Man, before God and Men, to assert his Innocency with such Assurance, and so frequently repeated in his Speech to the Sheriff, though short, yet twice repeated? 1. *God knows how far I was always from Designs against the King's Person, or of altering the Government.* 2. *I profess I know of no Plot, either against the King's Life, or the Government.*

In the Paper delivered, it is thus expressed: *Whatever Apprehensions I had of Popery, and of my own severe and heavy Share I was like to have under it, when it should prevail, I never had a Thought of doing any thing against it, basely or inhumanly, but what could consist with the Christian Religion, and the Laws and Liberties of this Kingdom.* Again; *I have always loved my Country much more than my Life, and never had any Design of changing the Government; and would have suffered any Extremity, rather than have consented to any Design to take away the King's Life.* In another Place, he thanks God his Part was sincere, and well meant, and affirms his Crime to be but Misprision of Treason at most; and infers, *so I die innocent of the Crime I stand condemned for:* Also he saith, *I know I was guilty of no Treason.* In the last Place, he concludes; *As I never had any Design against the King's Life, or the Life of any Man whatsoever, so I never was in any Contrivance of altering the Government.*

Half an Eye may see these Strokes are all drawn by the same Hand, with all imaginable Skill, to quiet the Conscience of a dying Criminal; and at the same Time, by casting a Mist before the Eyes of the unthinking Multitude, to possess them with the Innocence of the condemn'd Person, and the Cruelty of the Government towards him. Let it be considered with what careful Restrictions and Limitations his Innocency is ushered in: That he knew of no Plot or Design against the Person of the King, or to kill the King, or to alter or change the Government: That he never had a Thought of doing any thing basely or inhumanly, but what could consist with the Christian Religion, and the Laws and Liberties of this Kingdom: That his Crime was but Misprision of Treason at most, and so he is innocent of the Crime he stands condemn'd for. What

need of all these Cautions, Restrictions, and evasive Circumlocutions, to a plain Man at the Hour of his Death, to express his Innocency by? If it had been real, a few plain Words would have done it better; viz. That he was not engaged in, nor knew of any Design of making an Insurrection or Rebellion within the Kingdom. He heard the Proof made, and knew that was the Crime laid to his Charge, which is High Treason, both at Common Law, and within the first Branch of 25 Ed. 3. But that was too clear a Matter for a dying Man plainly to deny; his Conscience must have controlled him.

And to let every Man understand the Subtlety of that Paper in Declaration of the Lord *Ruffel's* Innocence, with such Restrictions, it is necessary to be known, that there were two Parts in this horrid Design; one was a general Rising, managed by a select Council, wherein the Conspirators, according to their different Principles, had their different Ends; some were for a Commonwealth, though the fewer in Number; others were for continuing the Monarchy and Government, but with Exclusion of his Royal Highness. Of this latter Sort were the Duke of *Monmouth*, and the Lord *Ruffel*, who plainly sets down in the Paper the Duke of *Monmouth's* Opinion of him, That they were both of a Temper. And the Lord *Ruffel* gives his Opinion of himself, That *his Earnestness in the Matter of the Bill of Exclusion, had no small Influence in his present Sufferings:* Though spoken by him with great Reflection upon the Government, yet it truly seems to have been the natural Cause of those Extravagancies he was led into; his Zeal in that Matter transporting him to seek that by Force, which the King had before denied in a Course of Parliament.

The other Part of the Plot was downright assassinating of the King and the Duke of *York*; this was managed by a Council of *Ruffians*, who, according to their Principles, judged this the most expeditious and safest Way to secure the general Rising, and render it more effectual. This was made out beyond all peradventure by many Witnesses at the Trials of Captain *Walcot* and *Hone*; the latter whereof, besides the Proofs against him, confessed himself to be one of the Number who had engaged themselves to kill the King. For this latter horrid Fact of Killing and Assassinating, the Lord *Ruffel* was not accused thereof, nor any Proof offered to make it out:

And therefore his frequent Professions of his Innocency, as to any Plot or Design upon the King's Life, or to kill the King, or his knowing any thing thereof, and of his Abhorrence thereof, as an inhuman, base, vile, and barbarous Act, (which Epithets the Paper gives to that foul Fact) are no plain Declarations of his Innocence as to the Crime charged and proved upon him, of Conspiring and Consulting to raise an Insurrection within the Kingdom.

And 'tis evident, by the Lord *Ruffel's* restraining the Expression of his Innocency to the Design upon the King's Life, and to killing of the King, and omitting to mention the general Rising, which was fully proved upon him, that the Lord *Ruffel* intended only that Crime for which *Hone* and *Walcot* were condemned, of assassinating the King.

The other Restriction of his Innocency, as to any Design for Alteration, or Change of the Government, which he esteemed the best in the World;

World; which amounts to no more than that he had no Design himself, nor knew of any, to throw off Monarchy, and to introduce a Commonwealth; which was never charged upon him, and may easily be presumed to be such a Government as was no ways agreeable to his Height of Spirit.

But this is no Denial of his being engaged in any Design to make an Insurrection; though his End in such Insurrection were far short of killing of the King, or changing the Monarchy.

Let it be supposed to be only to overawe the King, that a Parliament might sit to pass the Bill of Exclusion, and other Bills, for the Security of the Protestant Religion, or other specious Pretence whatsoever; which is the best Construction can be put upon the Lord *Russel's* Case.

That he had a Part in the Insurrection, is evidently proved, and not denied by him: But he saith his Part was sincere and well-meant. What that sincere Meaning was he doth not plainly tell us, which becomes a dying Man to do; but leaves us to conjecture, from the other Parts of the same Paper, what his sincere Purposes were. His Zeal for the Bill of Exclusion, and Detestation of Popery, which accompanied him to his Death, argue his sincere Intention in the Rising to be something that was for the promoting of the Bill of Exclusion, and the utter Extirpation of Popery. Yet he professeth, that notwithstanding all his Zeal against Popery, he never had a Thought of doing any thing against it basely or inhumanly, but what would well consist with the Christian Religion, and the Laws and Liberties of this Kingdom.

This again renders the Matter difficult, to guess at his sincere Meaning in the Design. But the Compiler of the Speech hath so ordered the Composition of the Sentences, by the discreitive Particle *But*, that Room is left for the dying Person to intend nothing to be inconsistent with the Christian Religion, and the Laws and Liberties of this Kingdom, but what was base and inhuman, as the Assassination of the King and Duke is judged to be; and that an Insurrection only to compel the King to pass such Bills as his Protestant Subjects conceived necessary for the Preservation of their Religion, was no base and inhuman thing; and therefore not inconsistent with the Christian Religion, but for the Support of it; nor with the Laws and Liberties of the Kingdom, which allow, in the Opinion of too many, both more ancient and modern Fomenters of Rebellion against Princes, a Liberty in the People to acquire that which they apprehend to be their Right, and for their Preservation, by Force, which they cannot obtain from their Princes by fair Means, upon the Account of a Supreme Law for Preservation of themselves, and their Religion, inherent to all Governments.

To this Purpose was prepared and published that venomous Book of *Julian*, so much hugged and applauded by the Conspirators, as a fit Plaster composed of ancient Christian Practices, for such Consciences who might entertain the least Scruple against infamous libelling of their Prince, or using any Force or Coercion upon the Government. To the same Purpose have been printed, and reprinted of late, divers seditious Books and Pamphlets; and another was preparing for the Press, by one of the Conspirators, *To assert a*

*Supremacy in the People, to determine for themselves, against their Prince.*

The Northern Climate hath of late furnished us both with Doctrines and Examples of the same Batch. The Compiler of the Speech was, without question, acquainted, if not infected, with those Doctrines, Tenets, and Examples; and therefore may be presumed to lie under that great Delusion, That it was lawful for Subjects to procure from their Princes by Force whatever they judged necessary for the Preservation of their Civil or Religious Rights, so in the doing thereof their Parts were sincere and well meant:

When nothing is clearer by the Laws of this Kingdom, than that to raise a Rebellion, or make an Insurrection, be the Design or Intent thereof never so speciously good, is High Treason. And it is apparent that the Lord *Russel*, or the Author of that Paper, was misguided in two principal and plain Points of Law:

*First*, That Meeting and Consulting to make an Insurrection, and in order thereunto to seize upon the King's Guards, which the Paper calls Stirs, is not Treason within the Statute of *Edward III.*

*Secondly*, That the Lord *Russel's* being present at the several Consults for managing the Insurrection, and his Part therein, amounted only to Misprision of Treason; and so concludes himself innocent of the Crime he stood condemned for, which was High Treason, for compassing the Death and Destruction of the King, by conspiring to raise a Rebellion within the Kingdom.

These Mistakes of the plainest Points in Law are the only Supports of the Lord *Russel's* Innocency; whereby he comforted himself at his Death, and may mislead others into the same Ruin.

To prevent which, it is conceived seasonable upon this Occasion, to state clearly what the Law of the Land is upon those Points, to the common Understanding of every Subject.

As to the first Point, The Meeting and Consulting to make an Insurrection against the King, or raise a Rebellion within the Kingdom, be the End thereof never so specious for Publick Good, though the Rebellion be not actually raised, is High Treason by the Laws of this Land. It was so at Common Law, by the Consent of all the Books of Law that treat of that Matter, and no one Authority against it. It is so since the Statute 25 *Edward III. cap. 2.* within the first Branch of that Law against Compassing and Imagining the Death of the King. The Death of the King in that Law is not restrain'd to killing of his natural Person, but extends as well to civil Death as natural. To conspire to depose the King is equally High Treason with that of killing the King: So for imprisoning of the King, or seizing or taking of him into the Power of his Subjects, or for laying any Force or Restraint upon him, until he do what his Subjects would have him. These are all High Treason, for compassing his Death, either natural or civil; and all Overt-Acts, which declare the Intent of effecting any of these Crimes, as all Meetings, Consultations, and Agreements to rise in Rebellion, and to seize upon the King's Guards, which are his Defence against Force, and invite the Aid and Assistance of the King's Subjects of any other of his Kingdoms, plainly are Overt-Acts



of compassing the King's Death; and so have been adjudged in all Times, whenever such Case came into Judgment.

In 2 & 3 *Phil. & M.* one *Constable* dispersed divers Bills in the Night about the Streets, in which was written, *That King Edward VI. was alive, and in France*; and at another time, in *Coleman-street*, pointed to a young Man, and said, *He was King Edward VI.*

These things tending only to depose the Queen, were adjudged High Treason, for compassing her Death; and *Constable* was thereupon indicted, attainted, and executed. The Case is cited in *Calvin's Case*, Co. 7 Rep. fol. 106. 13 *Eliz. Dyer*, 298. Dr. *Story* practised with the Governor of *Flanders*, to invade the Realm with Force; and declared by what Means, and in what Manner and Place, the Invasion might be: No Invasion following, it was referred to all the Judges, to consider what Crime it was, who resolved it to be High Treason; because an Invasion with Power could not be, but of Necessity it must tend to the Destruction, or great Peril of the Queen.

*Jac. I.* The Lord *Cobham* conspired with Sir *Walter Raleigh*, and other the King's Subjects, to make an Insurrection within the Realm, in order to set up the Lady *Arabella Stuart* to be Queen: And to this Purpose treated with the Ambassador of the Arch-Duke of *Austria*, for procuring Money from the King of *Spain*, and persuaded the Lady *Arabella* to write Letters to the King of *Spain*, for his Assistance with Forces, and Letters sent accordingly; though the Insurrection did not follow, but a Discovery made before it was put in Execution. The Lord *Cobham*, and others of the Conspirators, were indicted of High Treason, for compassing the King's Death, and the several Meetings and Consultations for making the Insurrection, and procuring the Invasion, laid in the Indictment. The Lord *Cobham* was tried by his Peers, attainted, and executed. The Lord *Hale*, in his Pleas of the Crown, 13, takes notice only of the Overt-Act of writing the Letters to a foreign Prince, inciting an Invasion, which he allows to be a sufficient Overt-Act of that Treason which was laid in the Indictment, for compassing the Death of the King.

In the same Year of *Jac. I.* the Lord *Gray*, and other Conspirators, met and consulted to make an Insurrection, whereby they designed to seize the King into their Power, until he should grant them a Pardon for all Treasons, a Toleration of the Exercise of the Popish Religion, and the Removal of twelve of the Privy Council; and should make the Lord *Gray* Master of his Horse, and several others of the Conspirators, Lord Treasurer, Lord Privy Seal, and other great Officers.

They were indicted for compassing the King's Death, and raising a Rebellion within the Kingdom, and no other Overt-Acts laid in the Indictment, but several Meetings, Consultations, and Agreements between the Confederates, to raise a Rebellion for the Purposes aforesaid.

The Lord *Gray* was tried by his Peers, and had Judgment to be hanged, drawn, and quartered.

In Sir *Henry Vane's* Case, Meeting and Consulting about Treason were held sufficient Overt-Acts.

In *Plunket's* Case lately in the *King's-Bench*, the Indictment was for High Treason, in compassing the Death of the King; the Overt-Acts alledged against him were, Consulting to raise an Insurrection in *Ireland*, and bringing of the *French* into *Ireland*, and collecting Money in *Ireland*, and holding Correspondencies in *France* for that Purpose. There was no Proof of any Design upon the King's natural Person, which was in *England*; yet he was attainted and executed for High Treason, though no Insurrection or Invasion followed: So that there can be no Question at this time of Day, but that Meeting and Consulting to raise a Rebellion, though it be not an actual levying of War within another Branch of the Statute of 25 *Edw. III.* yet they are Overt-Acts of compassing the King's Death, within the first Branch of that Statute.

The other gross Mistake is, That the Lord *Russel's* Crime was only Misprision of High Treason.

Misprision of High Treason is the Concealment thereof by a Person who had a bare Knowledge of the Treason, without any Mixture of his Consent. But if the Person be present at the Debates and Consultations, though he say nothing, if he do not immediately reveal, but continues to meet and be present at their Debates, he is a principal Traitor. Where a Person was not present at the Debates and Resolves, but is afterwards acquainted with them, and gives his Consent thereto, it is High Treason, and not a Misprision barely.

This was the Case of *George Brooke*, to whom the Lord *Cobham* related the whole Conspiracy of setting up the Lady *Arabella*; who consented to the same, and was indicted and attainted as a principal Traitor in that Conspiracy. Now the Lord *Russel*, as he puts his own Case, of being present at several Meetings where seizing of the Guards were treated of, and horrid things spoken, argues himself guilty of High Treason, though he make a false Conclusion from those Premises, that 'twas but Misprision. But the Witnesses proving his frequent Meetings and Consults, and the last of them at his own House, and his express Consent to the Matters debated and agreed upon, do put it beyond a Question to any Man that desires not to be wilfully deceived, that the Crime of the Lord *Russel* was not a bare Misprision of Treason, but High Treason in the highest degree; being to raise a Rebellion against the King, the Consequence whereof in all Probability would have been the Destruction of the King, and Subversion of the Government, if not the Desolation of the whole Kingdom.

If, after this plain Account of the L. *Russel's* Case, any Persons be so hardy to think the Compiler of that Paper of greater Skill in the Laws of the Land than the Reverend and Learned Judges, who have judged his Crime to be High Treason; the utmost Comfort he can expect for his being deceived is, That he shall have the like comfortable Speech prepared for him upon the like Occasion.

N U M B E R XXIV.

To the KING's Most Excellent MAJESTY.

*The Humble Petition of Algernoon Sidney, Esq; \**

*Sheweth,*  
**T**HAT your Petitioner, after a long and close Imprisonment, was, on the seventh Day of this Month (*November*) brought by a Guard of Soldiers to the Palace-Yard, upon a *Habeas Corpus*, directed to the Lieutenant of the *Tower*, before any Indictment had been exhibited against him.

That whilst he was there detained, a Bill was exhibited and found against him; whereupon he was immediately carried to the *King's-Bench*, and there arraigned. In this Surprize he desired a Copy of the Indictment, and Leave to make his Exceptions, or to put in a Special Plea, and Council to frame it; but all was denied: He then offered a Special Plea ready engrossed; which was then also rejected, without reading: Being threatened, That if he did not immediately plead Guilty or Not guilty, Judgment of High Treason should be entered; he was forced, contrary to Law (as he supposeth) to come to a General Issue, in pleading Not Guilty.

*November* the twenty-first he was brought to his Trial; and the Indictment being perplexed and confused, so that neither he nor any of his Friends that heard it could fully comprehend the Scope of it, he was utterly unprovided of all the Helps that the Law alloweth unto every Man for his Defence: Whereupon he again desired a Copy, and produced an authentick Copy of the Statute *Edw. III.* whereby it is enacted, *That every Man shall have a Copy of any Record that toucheth him in any manner, as well that which is for, as against the King, or any other Person;* but could have neither a Copy of his Indictment, nor that the Statute should be read.

The Jury by which he was to be tried was not (as he is informed) summoned by the Bailiffs of the several Hundreds, in the usual and legal Manner; but Names were agreed upon by Mr. *Graham*, Mr. *Burton*, and the Under-Sheriff, and Directions given to the Bailiffs to summon them; and being all so chosen, the Copy of the Pannel was of no Use to him.

When they came to be called, he excepted against some for being your Majesty's Servants; which he did hope should not have been returned, when he was prosecuted at your Majesty's Suit.

Many others, for not being Freeholders (which Exceptions he thinks are good in Law) and others more lewd and infamous Persons, not fit to be of any Jury; but all was over-ruled by the Lord Chief Justice, and your Petitioner forced

to challenge them peremptorily, whom he found to be picked out as most suitable to the intentions of those who sought his Ruin; whereby he lost the Benefit allowed him by the Law, of making his Exceptions, and was forced to admit of mechanick Persons, utterly unable to judge of such a Matter as was to be brought before them.

This Jury being sworn, no Witness was produced who fixed any thing beyond Hear-say upon your Petitioner, except the Lord *Howard*, and those that swore to some Papers said to be found in his House, and offered as a second Witness, and which were written in a Hand like unto your Petitioner's.

Your Petitioner produced ten Witnesses, most of them Men of eminent Quality, the others of unblemished Fame, to shew the Lord *Howard's* Testimony was inconsistent with what he had (in the Presence of God) affirmed to many of them, (and as he swore at the Trial of the Lord *Russel*) under the same religious Obligation of an Oath, as if it had been legally administered.

Your Petitioner did endeavour further to shew, that besides the Absurdity and Incongruity of his Testimony, he being guilty of many Crimes which he did not pretend your Petitioner had any Knowledge of; and having no other Hope of a Pardon, but by the Drudgery of swearing against him, he deserved not to be believed: And that Similitude of Hands could not be Evidence, was delivered by the Lord Chief Justice *Keeling*, and the whole Court, in the Lady *Carr's* Case; so as no Evidence at Law remained against him.

That whosoever wrote those Papers, they were but a small Part of a polemical Discourse, in Answer to a Book written about thirty Years ago, upon general Propositions, applied to no Time, nor any particular Case; that it was impossible to judge of any Part of it, unless the Whole did appear, which did not; that the Sense of such Parts of it as were produced could not be comprehended, unless the Whole had been read, which was denied; that the Ink and Paper shewed it to be written many Years ago, and the L. *Howard* knowing nothing of them, they could have no Concurrence with what your Petitioner was said to have designed, with him and others.

That the Confusions and Errors in writing it, shew the same had never been so much as reviewed; and being written in a Hand that no Man could well read, neither fit for the Press, nor could be in some Years, though the Writer of it did intend it, which did not appear.

\* This Petition, though so material, is omitted in Col. *Sidney's* Trial; and should be read before his Speech at Execution, in Vol. 3. Pag. 738.



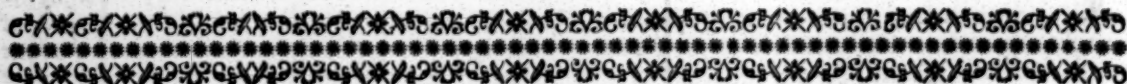
That they being only the present crude and private Thoughts of a Man, for the Exercise of his own Understanding in his Study, never shewed to any, nor applied to any particular Case, could not fall under the Statute 25 *Edw. III.* which takes Cognizance of no such Matters, and could not by Construction be brought under it, such Matters being thereby reserved to the Parliament, as is declared in the Proviso, which he desired might be read, but was refused.

Eight or nine important Points of Law did hereupon arise; upon which your Petitioner, knowing his Weakness, did desire his Council might be heard, or reserved to be found specially; but all was over-ruled by the Violence of the Lord Chief Justice, and your Petitioner so frequently interrupted, that the whole Method of his De-

fence was broken, and he not suffered to say the tenth Part of what he could have alledged in his own Defence; so the Jury was hurried into a Verdict which they did not understand.

*Now forasmuch as no Man that is oppressed in England can have any Relief, unless it be from your Majesty;*

*Your Petitioner humbly prays, That, the Premises considered, your Majesty would be pleased to admit him into your Presence; and if he doth not shew that it is for your Majesty's Honour and Interest to preserve him from the said Oppression, he will not complain, though he be left to be destroyed.*



## NUMBER XXV.

*A Copy of the Paper delivered to the Lord Keeper North, the Lord Chief Justice Jeffreys, and Mr. Attorney-General, by the Lady Armstrong, on the Behalf of her Husband Sir Thomas Armstrong.\**

*My Lord,*

I Am informed, That by the Common Law of England, any Man that was outlawed in Felony, or Treason, might bring a Writ of Error to reverse his Outlawry; which was to be granted *ex Debito Justitiæ*: Though it may be, the Manner of suing for such a Writ of Error to the King might be by way of Petition (as in a Petition or *Remonstrance de Droit* for Lands, &c.) And so it was resolved in *Ninian Melvin's Case*, *Co. 4 Inst.* 215.

Next, by the Common Law, If any Man were in England at the Time of the Exigent awarded, and went out of the Realm after that, and before the Outlawry pronounced, he could never assign that for Error, That he was beyond Sea at the Time of the Pronouncing of the Outlawry; and the Reason is, Because he was here at the Time of the Awarding of the Exigent, and might reasonably have Notice of it.

On the other side, If any were out of England during the whole Process and Pronunciation of the Outlawry, it was never yet a Doubt but that was an Error, and might be assigned for Error, either by the Party or his Heir, at the Common Law, and so continues to this Day; and was, not long since, adjudged in *O'Kerney's Case* the *Irishman*, who came in about two Years after the Outlawry.

Then comes the Statute of 5 & 6 *Edw. VI. cap. 11.* and enlarges the Law for the Benefit of the outlawed Person, and gives him Liberty to assign for Error, That he was beyond Sea at the

Time of the Outlawry pronounced; which he could not do by Common Law, before the Statute; and so continues.

Then comes the Proviso, and says, That he must come in within a Year, and render himself, to be entitled to the Benefit of that Act; which was to assign for Error, That he was beyond Sea at the Time of the Outlawry pronounced.

So that, my Lord, upon this short State of the Law, and my Husband's Case, he being beyond Sea all the Time of the Process, and at the Time of the Outlawry pronounced, it is conceived he is well entitled to assign this for Error, at the Common Law, without any Aid of the Statute, tho' the Proviso in that Statute should be ruled against him; which (with Submission) is the Opinion of many Learned Persons in the Law, That he is within the Intent and Meaning of that Proviso, for many Reasons too long to trouble your Lordship with now.

Therefore I do hope that this Case of my Husband's, being the first Case that any Man was executed upon an Outlawry (that did not desire it†) may have that Weight with your Lordship that it deserves: And do hope that your Lordship will so advise the King in Matter of Law (whose Council you are) that my Husband may have a Writ of Error granted him, and Council assigned him, to argue these Points, as by the Law has been allowed to Criminals in Capital Cases, with whatsoever else shall appear upon the Record of Outlawry produced, which as yet my Husband, or any for him, never saw.

\* This should be read after his Trial in Vol. 3. Pag. 897.

† *Holloway*, a little before, being in the same Condition, refused a Trial; and so was executed upon the Outlawry.

*A Copy of the Paper delivered by Sir THOMAS ARMSTRONG to the Sheriff. \**

I Thank Almighty God, though I have had but a short Time allowed me, I find myself prepared for Death, and my Thoughts set on another World; and I trust in God's Mercy, I am well weaned from setting my Heart on this: Yet I cannot but give so much of my little Time, to set down in Writing my Answers to some Calumnies raised since my close Imprisonment, as well as what Mr. Attorney accused me of at the Bar. I was told, a very great Person said I was a Spy of *Cromwell's*. I was sent from *England* by the best and considerablest Friends the King had then, with Bills of Exchange, and Letters of very great Importance, to his Majesty at *Brussels*; I appeal to his Majesty if I delivered them not safe, and his Answer to them, when I returned: Which I had not been above Six Days but I was clapped up a close Prisoner in the *Gatehouse*, and in extreme Danger of my Life, for that Journey. Before this, I had been a Year in *Lambeth-House* a Prisoner, and after a Prisoner in the *Tower*, when the Usurper died, and near starving in every one of them: Very ill Treatments for a Spy and a Pensioner! My Lord of *Oxford*, and many others of Quality, will, I think, testify my Innocence in this Point. I protest before God, I was never a Spy or Pensioner to *Cromwell*, or any other Man. On *Saturday* last I was brought down to the *King's-Bench* Bar, on an Outlawry of High Treason: I was asked what I had to say for myself, that Judgment of Death should not pass? I answered, That I was beyond Sea when the Outlawry came out; I thought the Law allowed a Writ of Error to reverse it; I prayed I might be allowed a Trial for my Life, according to the Laws of the Land; I urged the Statute of *Edw. VI.* which was express for it: but it signified nothing; I was condemned, and made a Precedent; though Mr. *Holloway* a little before had it offered him. I cannot but think all the World will conclude my Case very different: And why was it refused me? Mr. Attorney ac-

cused me there for being one of those that were to kill the King as soon as he came back from *Newmarket* after the Fire. I take God to Witness, I never was in any Design to take away the King's Life; neither had any Man the Impudence to propose so base and barbarous a thing to me; neither was I ever in any Design to alter the Government of *England*. What I am accused of, I know no otherwise than by Reports, and Prints; which I take to be uncertain: So that it cannot be expected I should make particular Answers to them. If I had been tried, I could have proved my Lord *Howard's* base Reflections upon me to be a notorious Falshood; for there were at least ten Gentlemen, besides all the Servants in the House, can prove I dined there that Day.

I have lived, and now die, of the Reformed Religion, a true and sincere Protestant, and in the Communion of the Church of *England*. I have found the great Comfort of the Love and Mercy of God, in and through my Blessed Redeemer, in whom I only trust; and I do verily hope I am going to partake of that Fulness of Joy which I believe is in his Presence; the Hopes whereof do infinitely please me. I thank God, I have no Repining at my Heart for the Condition my Sins have most deservedly brought me to; I have deserved much worse at the Hands of God: So that I cheerfully submit to this Punishment, as being taken off but a small time sooner. I do freely forgive all the World; even those concerned in taking away my Life. As for the Sentence of Death passed upon me, I cannot but think it a very hard one; being denied the Law of the Land, as I think. To conclude; As I never had any Design against the King's Life, or the Life of any Man; so I was never in any Design to alter the Government. I die in Charity with all the World; and therefore I heartily pray God to bless the Church of Christ every where, these poor Nations, and the King's Majesty; and I heartily commend my Soul to God's infinite Mercy, through my Blessed Saviour Jesus Christ.

\* From a MS. belonging to the late Mr. *Grainger* of the *India-House*. Sir *Thomas's* Speech being printed from a very imperfect Copy in the *State Trials*, Vol. 3. Pag. 898. it was thought proper to insert this, being printed from an authentic MS.



N U M B E R XXVI.

Anno 1<sup>o</sup> Gul' & Mariæ. }  
N<sup>o</sup>. IV.

*An Act for annulling and making void  
the Attainder of William Russell, Esq;  
commonly called Lord Russell. \**

WHEREAS *William Russell*, Esq; commonly called *Lord Russell*, eldest Son of the Right Honourable *William Earl of Bedford*, in the Month of *July*, in the five and thirtieth Year of the Reign of our late Sovereign Lord King *Charles* the Second, at a Sessions

of Goal Delivery, holden at the *Old-Bailey*, *London*, was, by undue and illegal Returne of Jurors, haveing been refused his lawfull Challenge to the said Jurors, for want of Freehold, and by partiall and unjust Construtions of Law, wrongfully convicted, attainted, and exe-

\* The Reversal of *Lord Russell's* Attainder (as also that of *Col. Sidney*, and *Mr. Cornish*) should be read after *Lord Russell's* Trial, in Vol. 3,



cuted for High Treason: May it therefore please your most excellent Majesties, at the humble Petition of the said Earl of *Bedford*, and the Right Honourable the Lady *Racbell Russell*, Relict of the said Lord *Russell*, That it be declared and enacted by the Authority of this present Parliament; and be it enacted by the King and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That the said Conviction, Judgment, and Attainder, of the said *William Russell*, commonly called Lord *Russell*, be, and are hereby repealed, reversed, made and declared null and void, to all Intents, Constructions, and Purposes whatsoever, as if no such Conviction, Judgment, or Attainder, had ever been had, or made: And that no Corruption of Blood, or other Penalty, or Forfeiture of

Honours, Dignities, Lands, Hereditaments, Goods, or Chattels, be by the said Conviction or Attainder incurred; any Law, Usage, or Custom, to the contrary notwithstanding. And to the End that Right be done to the Memory of the deceased Lord *Russell* aforesaid, Be it further enacted, That all Records and Proceedings relating to the said Attainder, be wholly cancelled, and taken off the File, or otherwise defaced and obliterated, to the Intent the same may not be visible in after Ages: And that at the next Sessions of Goal Delivery, to be holden for the City of *London*, the said Records and Proceedings shall be brought into the Court, and then and there taken off from the File, and cancelled.

*William Cowper*, Cler. Parliamentor.

(Exam.)



## NUMBER XXVII.

Anno 1<sup>o</sup> Gul' & Mariae.  
N<sup>o</sup>. XXIV. }

*An Act for annulling and making void  
the Attainder of Algernoon Sydney,  
Esq; †*

**W**HEREAS *Algernoon Sydney*, Esquire, in the Term of *St. Michael*, in the five and thirtieth Year of the Reign of our late Sovereign Lord King *Charles* the Second, in the Court of *King's-Bench* at *Westminster*, by Means of an illegal Return of Jurors, and by Denial of his lawful Challenges to divers of them, for want of Freehold, and without sufficient legal Evidence of any Treasons committed by him; there being at that Time produced a Paper found in the Closet of the said *Algernoon*, supposed to be his Hand-Writing, which was not proved, by the Testimony of any one Witness, to be written by him, but the Jury was directed to believe it by comparing it with other Writings of the said *Algernoon*; and besides that Paper so produced, there was but one Witness to prove any Matter against the said *Algernoon*; and by a partial and unjust Construction of the Statute, declaring what was his Treason, was most unjustly and wrongfully convicted and attainted, and afterwards executed for High Treason: May it therefore please your most excellent Majesties, at the humble Petition and Request of the Right Honourable *Phillip* Earl of *Leicester*, Brother and Heir of the said *Algernoon Sydney*, and of the Right Honourable *Henry* Viscount *Sydney*, of *Sheppy*, in the County of *Kent*, the other Brother of the said *Algernoon*, That it be declared and enacted, and be it enacted by the King's and Queene's most excellent Majesties, by and with the Advice and Con-

sent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Conviction, Judgment, and Attainder of the said *Algernoon Sydney*, be, and are repealed, reversed, made and declared null and void, to all Intents, Constructions, and Purposes whatsoever, and as if no such Conviction, Judgment, or Attainder, had ever been had or given: And that no Corruption of Blood, or other Penalty, or Forfeiture of Honours, Dignities, Goods, Chattels, Lands, Tenements, or Hereditaments, be by the said Conviction and Attainder incurred; any Law, Usage, or Custom, to the contrary notwithstanding. And to the End that Right be done to the Memory of the said *Algernoon Sydney*, deceased, Be it further enacted, That all Records and Proceedings relating to the said Attainder, be wholly cancelled, and taken off the File, or otherwise defaced and obliterated; to the Intent that the same may not be visible in after Ages: And that the Records and Proceedings of and to the said Conviction, Judgment, and Attainder, in the said Court of *King's-Bench* now remaining, shall, and be forthwith brought into the said Court, this present *Easter* Term, and then and there taken off from the File and cancelled.

*William Cowper*, Cler' Parliamentor',

(Exam.)

† This Act, which is refer'd to in *Loyer's Trial*, Vol. 6. Pag. 277, 279, &c. should be read after Col. *Sydney's Trial*, in Vol. 3.

N U M B E R XXVIII.

*At a Parliament begun and holden at Westminster, the 22d of January, primo Gulielmi & Mariæ Regis & Reginae, 1688. Numb. 39.*

*An Act for Reversing the Attainder of Henry Cornish, Esq; late Alderman of the City of London.\**

WHEREAS Henry Cornish, Esq; late Alderman of the City of London, was indicted of High Treason, upon Pretence, That knowing James late Duke of Monmouth, William Russell, Esq; and Sir Thomas Armstrong, to be Traitors, and to have conspired the Death of the late King Charles the Second, promised to be assisting to them in such Treasons, to bring them to Effect; and being thereupon arraign'd at the Sessions-House in the Old-Bailey, the 19th Day of October, Anno Dom. 1685, altho' he was committed for the said pretended Treason but the 13th of the same October, and had Notice of his Trial the 17th of the same October, and was kept close Prisoner from the Time of his Commitment to the Time of his Trial, and could not possibly therefore prepare himself for his Defence, neither would the Court, which tried him, give him any longer Time to prepare himself for his Trial, altho' he very much press'd for longer Time, having a material Witness to send for, who was not then in Town, and was above 140 Miles off: And having pleaded *Not Guilty* to the Indictment, he was presently tried and convicted on the single Evidence of Col. Rumsey, who swore the Prisoner was in the Room, at one Mr. Sheppard's House, in Company of the Duke of Monmouth, the Lord Russell, the Lord Grey, Sir Thomas Armstrong, Mr. Ferguson, Mr. Sheppard, and the Witness, when a Paper was read, the Contents whereof are a Complaint of the Misgovernment of King Charles the Second, and declaring for Liberty of Conscience, and that all those who would assist in that Insurrection, that had Lands of the Church, or of the King's, in the late Wars, should have them restored; to which Paper, as the Witness swore, the Prisoner express'd his Liking: Whereas the said Rumsey own'd, when he gave his Evidence, that he did not hear all the Paper read, nor did take great Notice of it, and therefore was not a competent Witness of

the Contents of the Paper. And whereas the said Col. Rumsey had, in the Lord Russell's Trial, expressly sworn that he was not in the Room when the said pretended Paper was read: And whereas Col. Rumsey, in the same Lord Russell's Trial, expressly mentions the Names of all the Persons in the said Room, in the said Mr. Sheppard's House, whereof the said Henry Cornish was none: And whereas Mr. Sheppard, whom Rumsey, in his Evidence, own'd to be in the Room when the said pretended Paper was read, expressly testified, *That the said Henry Cornish was not in the Room at the Time of the reading the said pretended Paper.* For all which Reasons, at the humble Petition and Request of Elizabeth Cornish, Widow and Relict, and Henry Cornish, eldest Son of the said Henry Cornish; Be it Enacted by the King and Queen's most Excellent Majesties, and by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Conviction and Attainder of the said Henry Cornish, deceased, for High Treason, be hereby reversed, annull'd, and made void, to all Intents and Purposes whatsoever. And to the End that Right be done to the Memory of the deceased Henry Cornish aforesaid, Be it further Enacted, That all Records and Proceedings relating to the said Attainder, be wholly cancell'd, and taken off the File, or otherwise defaced and obliterated, to the Intent the same may not be visible in After-Ages; and that at the next Sessions of Goal-Delivery, to be holden after the Feast of St. Michael next, for the City of London, the said Records and Proceedings shall be brought into the Court, and then and there taken off from the File and cancell'd.

*Copia Vera.*

*Jo. Brown, Cleric. Parliament.*

\* To be read after Mr. Cornish's Trial, in Vol. 3.





## NUMBER XXIX.

Soon after the *Revolution*, TITUS OATES delivered the following PETITION.

*To the Right Honourable the Lords Spiritual and Temporal,  
and to the Honourable the Knights, Citizens, and Burgeses,  
in this present Parliament assembled; The Humble Petition  
of Titus Oates, D. D. \**

*Most humbly sheweth,*

**T**HAT your Petitioner, in the Year 1678, discovered a horrid Popish Conspiracy for the Destruction of the late King *Charles II.* his present Majesty, and the Protestant Religion within these Kingdoms; and proved it so fully, that several Parliaments, and Courts of Justice, before whom he gave his Testimony, declared their Belief of it by publick Votes, and the Condemnation of several of the Conspirators. For which Reason, and because your Petitioner would not be terrified by their Threats, nor seduced by their Promises of great Rewards (with both which Temptations they often assaulted him) to desist in his Discovery, the Jesuits and Papists pursued him with an implacable Malice, and endeavoured to take away his Fame and Life, by suborning Witnesses to accuse him of Capital Crimes: But being defeated in that villanous Attempt, they first procured King *Charles II.* to withdraw that Protection and Subsistence his Majesty had, at the Request of several Parliaments, allowed to your Petitioner; and then instigated his Royal Highness the Duke of *York* to prosecute your Petitioner in an Action of *Scandalum magnatum*, for speaking this notorious Truth, That he the said Duke of *York* was reconciled to the Church of *Rome*; and that it is High Treason to be so reconciled: wherein a Verdict and Judgment for One hundred thousand Pounds Damages were obtained against your Petitioner; and your Petitioner was committed to the King's-Bench Prison.

After this the same Popish Party obtained Leave from King *Charles II.* to prefer two several Indictments against your Petitioner, for two pretended Perjuries in his Evidence concerning the said Conspiracy; which they brought on to Trial in the Reign of King *James II.* And your Petitioner was, upon the Evidence of those very Witnesses who had confronted him in three former Trials, and were disbelieved, and through the partial Behaviour of the Chief Justice *Jeffreys*, in brow-beating his Witnesses, and misleading the Juries, convicted of the said pretended Per-

juries, and received this inhuman and unparalleled Sentence following; viz. *To pay Two thousand Marks to the King; to be divested of his Canonical Habit; to be brought into Westminster-Hall with a Paper upon his Head, with this Inscription, "Titus Oates convicted upon full Evidence of two horrid Perjuries;" to stand in and upon the Pillory two several Days for the Space of an Hour; to be whipped by the common Hangman from Aldgate to Newgate on Wednesday, and to be whipped again on the Friday following from Newgate to Tyburn; to stand in and upon the Pillory five times in every Year of his Life; and to remain a Prisoner during his Life.* Which Sentence, being intended, as your Petitioner hath just Reason to believe, to murder him, was accordingly executed with all the Circumstances of Barbarity; he having suffered some thousands of Stripes, whereby he was put to unspeakable Tortures, and lay ten Weeks under the Surgeons Hands. Neither did their Cruelty cease here; but, because your Petitioner, by God's Mercy miraculously supporting him (and the extraordinary Skill of a judicious Surgeon) outlived that bloody Usage, some of them afterwards got into your Petitioner's Chamber whilst he was weak in his Bed, and attempted to pull off the Plaisters applied to cure his Back, and threatened to destroy him: And that nothing within their Power or Malice might be wanting to complete your Petitioner's Misery, they procured him to be loaded with Irons of excessive Weight for a whole Year, without any Intermission, even when his Legs were swollen with the Gout; and to be shut up in the Dungeon, or Hole of the Prison; whereby he became impaired in his Limbs, and contracted Convulsion Fits, and other Distempers, to the great Hazard of his Life. All which illegal Proceedings, and barbarous Inhumanities, your Petitioner humbly conceives were not only intended as a Revenge upon him, but likewise to cast a Reproach upon the Wisdom and Honour of four successive Parliaments, who had given him Credit, and upon the publick Justice of the Nation. And your Petitioner humbly hopes that, since the

\* To be read after Oates's Trials, in Vol. 3 & 4.

Papists themselves have verified and confirmed his Evidence, by their late open and avowed Violations of our Religion, Laws and Liberties, this Honourable House will vindicate the Proceedings of former Parliaments, and discharge your Petitioner from those arbitrary and scandalous Judgments, and the unjust Imprisonment he lies under.

*Your Petitioner doth therefore most humbly beseech your Lordships and your Honours, to take this deplorable Case into your generous and tender Consideration, and to give him such Redress therein, as your Lordships and your Honours great Wisdom, Justice, and Goodness shall seem meet.*

*And your Petitioner shall ever pray, &c.*

*In the House of Peers, on the Vote for affirming the Judgment against TITUS OATES.*

*Die Sabbati 25 Maij, 1689.*

WE dissent, for these Reasons.

1. For that the *King's-Bench*, being a Temporal Court, made it Part of the Judgment, That *Titus Oates*, being a Clerk, should for his said Perjuries be divested of his Canonical and Priestly Habit, and so continue divested all his Life; which is a Matter wholly out of their Power, belonging to the Ecclesiastical Courts only.

2. For that the said Judgments are barbarously inhuman and unchristian; and there is no Precedent to warrant the Punishments of Whipping and Committing to Prison for Life, for the Crime of Perjury; which yet was but one Part of the Punishments that were inflicted upon him.

3. For that the particular Matters upon which these Indictments were founded, were the Points objected against Mr. *Titus Oates* his Testimony, in several of the Trials in which he was allowed to be a good and credible Witness, though testified against him by most of the same Persons who witnessed against him upon these two Indictments.

4. For that this will be an Encouragement and Allowance for giving the like barbarous, illegal and cruel Judgments hereafter, unless this be reversed.

5. Because Sir *John Holt*, Sir *Henry Pollexfen*, the two Chief Justices, and Sir *Robert Atkins*, Chief Baron, with six Judges more (being all that were then present) for these and many other Reasons, did before us solemnly deliver their Opinions, and unanimously declare, That the said Judgments were contrary to Law and ancient Practices; and therefore erroneous, and ought to be reversed.

6. Because it is contrary to the Declaration of the twelfth of *February* last, which was ordered by the Lords Spiritual and Temporal, and Commons then assembled, and by their Declaration engrossed in Parliament, and enrolled among the Records in Parliament, and recorded in Chancery, it does appear, that excessive Bails ought not to

be required, nor excessive Fines imposed, nor cruel and unusual Punishments inflicted.

<i>Bolton,</i>	<i>Vaughan,</i>	<i>Oxford,</i>
<i>Macclesfield,</i>	<i>Stamford,</i>	<i>Bath,</i>
<i>J. Bridgewater,</i>	<i>Gray,</i>	<i>R. Eure,</i>
<i>Bolingbroke,</i>	<i>Cornwallis,</i>	<i>P. Wharton.</i>
<i>Herbert,</i>		

Bishop *Kennet*, in his *Complete History of England*, Vol. III. says, "On May the thirty-first the House of Lords having heard the Opinion of all the Judges concerning the Illegality of two Judgments given against *Titus Oates*, upon the Point of Perjury, for which he had brought his Writs of Error; the House had this main Question proposed, *Whether the said two Judgments should be reversed?* Which being resolved in the Negative, and the said Judgments confirmed, thirteen Lords entered their Dissents," for the before mentioned Reasons. "This Protestation (*says the Bishop*) worked so powerfully in the House of Lords, that the following Day their Lordships, after hearing Council at the Bar, to argue the Errors assigned by *Oates*, did order and adjudge, That the Judgment given against the said *Oates* should be reversed: And Leave was given for the bringing in a Bill for the securing Persons hereafter from the Prejudice which might come from his Testimony. A Bill of Reversal passed the Lower House: And upon a second Reading in the Upper, there were several Amendments made, and a Proviso inserted, whereby it was declared, *That until the Matters for which Titus Oates was committed for Perjury, were heard and determined in Parliament, the said Oates should not be received in any Court or Cause whatsoever to be a Witness.* Against which Proviso and Amendments a Protestation was entered, by the Earls of *Oxford*, *Suffolk*, *Monmouth*, *Mountagu*, *Macclesfield*, *Bedford*, *Stamford*, and *Sussex*, and the Lords *Newport*, *Berkley*, *Cornwallis*, *Page*, and *Herbert*. When the Bill was sent back to the Commons, they disagreed to the Amendments: Upon which a memorable Conference began between the Two Houses, on *July* the twenty-ninth; which occasioned great Heats, that might have risen into greater Flames, if the Parliament had not been suddenly adjourned. And all that *Oates* was able to obtain in this Session was only, on *June* the sixth, an Address from the Lords, at the Commons Desire, requesting his Majesty, *That whereas Titus Oates, Clerk, had already received a severe Punishment, for the Perjury whereof he had been formerly convicted; and some of the said Punishments would still be continued upon him, unless they should be remitted by His Majesty; His Majesty would be graciously pleased to grant His Pardon to the said Oates.* The King readily complied with the Lords Desire: And moreover, as soon as, by their Lordships Order, *Oates* was discharged from his Confinement, His Majesty received him into his Protection, and allowed him a considerable Pension; which occasioned various Reflexions."





## NUMBER XXX.

*Informations and Examinations, taken upon Oath before a Committee of the House of Lords, appointed to inspect who were the Advisers and Prosecutors of the Murders of the Lord Russel, Colonel Sidney, Sir Thomas Armstrong, Mr. Cornish, and others \* ; whereof a Report was made by the Right Honourable the Earl of Stamford, upon the twentieth Day of December, 1689.*

**M**R. John Phelps, Mr. Thomas Morris, Mr. Peter Hagar, Mr. Robert Bates, Mr. Richard Haly, Mr. Horneby, and Mr. Crispe Grang (all Persons of good Value, and unspotted Reputation) being examined upon Oath in relation to *Josiah Keeling*, deposed in Substance as follows; *viz.*

That *Keeling*, three or four Days or a Week before his Discovery of the *Presbyterian Plot*, came into their Company at the *Fleece Tavern* in *Cornhill*; where he appearing to be much disturbed and confused, one of their Company enquired of him why he seemed to be so disordered; to which he answered, That he lay under a great Temptation; for he was sent to by the Lords in the *Tower*; and some Gentleman that came to him from them told him, his own Party had disoblged him, and he had now an Opportunity to be revenged of them; that he could not be insensible of some Persons that designed against the Government; and that if he would discover, he might make himself and his Family; that he had great Proffers of Money, and a Place of a Hundred Pounds *per Annum*; and might go in a Coach and six Horses to *Windfor*: And that he was to meet those who treated with him again that Night, at the *Bull-Head Tavern* near the *Tower*.

That upon *Keeling's* talking at this Rate, one of the Company ask'd him, why he troubled them with this Discourse; and told him, if he knew any thing against the Government, he ought to discover it; but if he knew nothing, he would do well to keep out of such Temptations, and not go to the Meeting appointed: But he said he would go, because he had promised them in the Morning that he would meet them again; but declared that he knew nothing; and said that he acquainted them with it, because if he should be prevailed upon, by Temptation of Money, to witness any thing, they should be able to witness against him, that he had declared that he knew nothing in Agitation against the Government; and that they should testify, that he was the

greatest Rogue and Villain living, if he should swear against any Man.

Mr. Phelps (in particular) deposed, That he attended to have testified this at my Lord *Russel's* Trial, but was not asked to come in at any other of the Trials, and durst not appear unless desired; that he remembers not whether or no he knew of *Walcot's* Trial before it was over; but that he knew not that *Keeling* was a Witness against him till after the Trial was over.

Mr. Morris deposed, That he knew not that *Keeling* was a Discoverer of a Plot till after *Walcot's* Trial; but believes he acquainted Sir *Will. Pulteney* what he heard *Keeling* say before the Lord *Russel's* Trial, and also told it to Mr. *Stevens*; whereupon he was subpœna'd to that Trial, and went; but the Trial was not till three or four Days after the Time he was directed to attend; that a second Subpœna came the Night before the Trial, but he being from home did not receive it till after the Trial.

Mr. Hagar deposed, That he thinks he knew *Keeling* was a Witness against Captain *Walcot*, but did not then offer himself to be a Witness, because Times were so difficult; but when he heard of my Lord *Russel's* Trial, he acquainted his Lordship's Servant with what he has now sworn, and that he attended at the Trial, but *Keeling* was no Witness.

Mr. Bates deposed, That he believes he told what he hath now sworn about *Keeling's* Declaration at the *Fleece Tavern* to twenty Persons, before the Lord *Russel's* Trial; and that he heard *Keeling* say, in the *Amsterdam Coffee-house*, *It is reported that I have discovered a Plot of the Duke of Monmouth, my Lord Russel, and others; but I know nothing of it, and am innocent, and falsely accused.*

Mr. Haly deposed, That he remembers not that he spoke of what he has now sworn to any Person; for Times were such, he was afraid to speak of it.

\* To be read after their Trials, in Vol. 3.

*John Keeling* depofed, That *Jofiah Keeling*, his Brother (who gave his firft Information upon Oath to Sir *Leoline Jenkins*, upon the twelfth of June, 1683.) came to him the next Day, and called him out, and carried him into the Company of *Goodenough*, at the *Dolphin Tavern*; where they talked of taking off the *Blackbird* and the *Goldsmith* (meaning the King and the Duke :) That the Company being parted, he the faid *John Keeling* told his Brother, that he did not underftand that *Gibberifh*, and therefore would not be concerned.

That his Brother then carried him to one Mr. *Peckham*, at the *Fleece Tavern* in *Southwark*; where *Peckham* encouraged him, and told him, if he would be a Witnefs, he fhould be well rewarded: Then he carried him to two Gentlemen (whom he knew not) to the *Flanders Coffee-houfe*; who encouraged him, and would have had him to a Dinner, but he declined it.

That then his Brother told him, he muft go with him to Secretary *Jenkins*, to give Information of what he had heard; to which he fhewing Aversion, his Brother told him, he muft go thither or to *Newgate*; and fo he was compelled to comply.

That he gave Notice to Mr. *Tory* (his Brother's Mafter) how his Brother had trapped him, and made him to fwear; and that he acquainted Mr. *Jones* therewith, and defired him to give Notice to the Perfons accufed.

That he did not believe the Plot till he faw the Proclamation, and underftood that *Lee* the Dyer came in for a Witnefs; that his Brother had Five Hundred Pounds of the King, and brought it to a Coffee-houfe.

That he the faid *John Keeling* was fubpcena'd to be a Witnefs againft the Lord *Ruffel*, and was fworn to give Evidence to the Grand Jury; but was not examined.

Mr. *Nathaniel Wade* depofed, That *Jofiah Keeling* accufed him of being in the *Rye-houfe Plot*; though he had never been above twice in his Company: That, at the *Salutation Tavern* in *Lombard-Street*, he heard *Keeling* fpeak very extravagantly, and fay he would do fome brisk thing; and that thereupon Mr. *Nelthorpe* faid, *I prithee be not mad*: And that prefently after Mr. *Wade* heard his own Name in a Proclamation.

Mr. *John Tifard* depofed, That at my Lord *Ruffel's* Trial four Gentlemen told him, that *Keeling* (who was to have been the firft Evidence againft his Lordfhip) had confefled that he was to meet fome Gentlemen at a Tavern, who were to give him Instructions what to fwear; but he faid, when he had received the Instructions, he would make a Difcovery.

That, however, *Keeling* was not produced againft my Lord; and he believes the Reason was, Becaufe fome were apprized of the Defence which his Lordfhip would have made againft his Evidence.

Mr. *Nathaniel Gael* depofed, That by the Perfuafion of *Keeling's* Mother, he procured a Hundred Pounds to be lent to him by Mr. *Wolfe*, a Merchant, to fupply his Neceffities; which *Keeling* repaid three Months after; which was after he was an Evidence.

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*Jofiah Keeling* being examined, declared, That he remembers not that he was in an Agony or Trouble at the *Fleece Tavern*; or that he told the Company there, he was to meet any Perfons concerning the Difcovery of a Plot; or that he was promifed a Groat, or Employment; or that he defired them to bear Witnefs againft him, if he pretended to fay any thing of a Plot; or that he knew nothing.

That he was fubpcena'd at the Lord *Ruffel's* and *Walcot's* Trials; and was there during the whole Trial of the Lord *Ruffel*.

That he applied himfelf to the Lord Privy-Seal, at his Houfe, to help him to his Place in the Victualling-Office; and he thinks he applied alfo to the Duke of *York*: That he after reminded the Lord *Hallifax* going up into the Gallery at *Whitehall*; and after that he heard he had his Place, he thanked him that Evening; and he continued in his Place till within thefe fix Weeks.

That he had Money of the King, as Subfiftence; and alfo received Five Hundred Pounds of Mr. *Duncumb* the Banker: That the King told him, he fhould have a Hundred Pounds a Year; but he never had it.

Mr. *Aaron Smyth* depofed, That he was a Prifoner in the *Tower* when my Lord *Ruffel* and Colonel *Sidney* were tried; and was kept clofe Prifoner above nineteen Weeks, at Five Pounds a Week Charge; and two Warders watched him, or lay in the Room.

That one of his Warders told him, that Sir *Ambrofe Phillips* was come to fpeak with him; and had an Order from one of the Secretaries to come as often as he would, and bring whom he would along with him; but then he was alone. When Sir *Ambrofe* came in, after fome other Difcourfe, he told him it was in his Power to make himfelf what he would; For (faid he) you know this Rogue *Sidney* is a Traitor; and you may make yourfelf what you will, if you will difcover what you know of his Defigns againft the Government.

That he replied, he could not fay any thing that could touch a Hair of Col. *Sidney's* Head: And that then *Phillips* faid, if he might advife the King, he would have all the damned *Wbig* Rogues hanged; And for your part, every body knows you are guilty.

Sir *Ambrofe Phillips* being examined, confefled, That *Aaron Smyth* had been his Client, and there was a Friendfhip between them; and he thought he might have prevailed with him to have declared what he knew; which he thought would be a Service to the Publick, and Service to himfelf.

That he cannot be pofitive, whether Mr. *Roger North* gave him an Order to go to *Aaron Smyth*, or told him he fhould find an Order with the Lieutenant of the *Tower*.

That he ufed to Mr. *Smyth* the Arguments a Friend might do, and told him he came not to trapan him; nor would he difcover more of what he would tell him, but what he would give him Leave: But he found him very refolute; and fo fairly took his Leave, and never came near him more.

That he believes he might fay to Mr. *North*, that he had fuch a Power in Mr. *Smyth*, to perfuade him to tell what he knew; that no body



besides Mr. *North* either persuaded or advised him to go to Mr. *Smyth*.

Mr. *Roger North* being examined, said, That he procured no Order for Sir *Ambrose Phillips* to go to *Aaron Smyth*; nor doth he believe he ever had any Conversation with him about that Matter; and he is confident he never delivered him any Order for going to him, nor told him that he should find any such Order at the *Tower*; nor, to the best of his Remembrance, knew he of any such Order; and that Sir *Ambrose Phillips* misremembers, if he says he had any such Order from him.

Sir *John Moore* being examined, said, That 'twas not he that rejected the Sheriffs, but the Court of Aldermen; that Mr. *Papillon* was set aside by the Court, because Sir *John* had drank to Sir *Dudly North*.

That he doth not believe or remember, that he had any Orders from Court to drink to Sir *Dudly*; that Secretary *Jenkins* was often to visit him, but never gave him any Directions.

That he believes Mr. *Papillon* and Mr. *Dubois* demanded the Poll; that he had no Direction from *Whitehall* to reject the Poll, but the Court of Aldermen did reject it.

That the Soldiers were sent to keep the Peace; that he remembers not that he, either the Day before, or that Morning of the Poll, made any Promise not to disturb the Poll; nor doth he remember what Time of the Day he went to disturb the Poll: Many of the Citizens came to his House, and would have him to the Hall, telling him, the Poll went on, though he adjourned it; which Adjournment, he saith, was by Advice of the Court of Aldermen.

Mr. *Normansel* and Mr. *Trotman*, the Secondaries, deposed, That *Graham* and *Burton* were the Prosecutors of my Lord *Russel*; that Sir *Dudly North* had the Books from them, and returned my Lord *Russel's* Jury; that Juries had usually been returned by the Secondaries, and taken out of two, three, or four Wards; but this Jury was taken out of about nineteen Wards: That Sir *Benjamin Thorowgood* returned the Jury upon Alderman *Cornish*.

Mr. *Trotman* added, that *Graham* and *Burton* were also the Prosecutors of Alderman *Cornish*.

Mr. *Perry* (who had been Clerk to Mr. *Trotman* nine Years) deposed, That he was not by at the Return of my Lord *Russel's* Jury; but he made a Copy of it, and it was under Sir *Dudly North's* Hand.

That he was with Mr. *Trotman* at Sir *Benjamin Thorowgood's* House, who had the Books of both the Compters; and he wrote the Names, as Sir *Benjamin* directed him.

That in common Cases the Pannels used to be returned out of two or three Wards.

Mr. *Crisp*, the Common Serjeant, deposed, That he hath known Juries returned out of six Wards, and never out of fewer than four.

That he was in Court at part of the Lord *Russel's* Trial: That he remembers his Lordship desired he might be heard by Council, and that they might have Time to consider of it; but the Court heard them immediately.

Sir *Dudly North* being examined, said, That he was a Freeman of *London*; and the Lord Mayor drank to him as Sheriff; and he took upon him the Office, and was 2000 *l.* out of Purse, which he never had again directly or indirectly.

Sir *Dudly* went on, saying, That he impannelled the Juries for the Sessions, when the Lord *Russel* was tried: That he return'd the best Jury he could, without observing any Ward; and drew this out of several Wards, because they might be the more substantial Men.

That to the best of his Remembrance, Sir *Peter Rich* concurr'd in this Jury; if he had opposed it, he should not have done it.

That the Juries before were return'd by the Secondaries, but this being a very extraordinary Business, he thought it requisite to take care of it himself.

That he took no care of what Opinion the Jury were of, but only that they were substantial Men.

That he had no Order or Directions from any Man alive, to take care of this Business.

Sir *Peter Rich* declared, That he was never asked in his whole Year to impannel a Jury; and that he never impannel'd any, or sign'd any Pannel, to his Knowledge; and says positively, that the Books were sent to him by the Secondaries, and that he never saw the Pannel of my Lord *Russel's* Jury, till he heard it read in Court.

That the usual Practice of the Return of Juries in *London*, is by the Secondaries.

Sir *Benjamin Thorowgood*, being examined, said, That he was Sheriff at the Time when Mr. *Cornish* suffer'd: That the two Secondaries brought him the Books: That he knows not out of how many Wards the Jury was return'd, but he thinks out of most of them, and he believes it to be the Custom to return the Jury so.

That he thought it a piece of Justice in him, to see the Jury fairly return'd; being the Gentleman to be try'd had been one of his Predecessors.

That the Jury were of the sufficientest, ablest, and honestest Men of the City of *London*: And he believes, all the Men that served of the Jury, were those he returned.

Mr. *Henry Cornish*, being examined, deposed, That his Father was kept close, from his Commitment to the Day of his Trial, and Cap: in *Richardson* would admit none of his Friends to come to him.

That he went to *Normansel*, the Secondary, for a Copy of the Pannel, and either he or his Clerk told him, that *Burton* and *Graham* had it; and when he came again in the Evening to them for it, one of them told him, They had Orders from above, not to let him have it.

Sir *James Forbes* deposed, That the Duke of *Monmouth* desired him to shew Mr. *Hambden* a Paper written with the King's own Hand; which was for the Duke's owning of the Evidence of *Rumsey*, and others.

That he told the Duke, that that Paper would make him infamous, and would be a Means of destroying many Men's Lives; whereupon, the Duke sent him with the Paper to the Earl of *Anglesey*, who, upon the reading of it, presently wrote a Paper of Reasons against it.

That

That before Sir *James* went to the Earl of *Anglesey*, the Duke told him, if it were so as he had told him, he would have the Paper again, tho' he died for it; whereupon, Sir *James* ask'd him how he would get it; that the Duke said, the King would shew it him, and then he would tear it out of his Hand; and then further said, the Duke of *York* was his implacable Enemy.

That as soon as Mr. *Hambden* had read the Paper, he said, he was a dead Man; and ask'd Leave of Sir *James* to shew it to his Father, which he consented to.

That he return'd to the Duke, and gave him the Earl of *Anglesey's* Reasons against the Paper, together with his own Thoughts of it: Whereupon the Duke replied, That he saw they had a mind to ruin him, and he was only brought into Court to do a Job; and that he would not sleep before he had retrieved the Paper.

That the Duke told him how kindly the King had express'd himself to him; and Sir *James* desired the Duke to save Colonel *Sidney*, if possible, but he fear'd he could not; but said, He had told the King how good a Man the Lord *Russel* was, and how unjustly he had been put to Death.

That, at the Desire of Mr. *Hambden*, the Duke went to visit him, before he had his Pardon; tho' he thought it to be very dangerous, and was with him two or three Hours in private, and Sir *James* believes it was about saving the Colonel's Life.

That the Duke's Servants told Sir *James* at the Cock-Pit, that they were order'd not to suffer any of his old Friends, or Whigs, (and such and such in particular) to see, or pay a Visit to the Duke.

That the Duke told Sir *James*, That the Lord *Hallifax* perswaded him to sign the Paper; but whether it were for his Good or not, he knew not.

That when Sir *James* told the Duke, how it was reported in the Town, that he was come in to be a Witness, he answer'd, he never would.

That the next Day after Sir *James* had given the Duke the Earl of *Anglesey's* Reasons, and Mr. *Hambden's* and his own Opinion, Colonel *Godfrey* came to him, and told him, That the Duke had recover'd the Paper, and had got it into his own Possession; and Sir *James* went to tell Mr. *Hambden*, Mr. *Charlton*, and Major *Wildman* of it.

Colonel *Godfrey* deposed, That the first Night the Duke of *Monmouth* came to Court, he went to him with Sir *James Forbes*; and the Duke told them how kind the King was to him, in giving him his Pardon; and that he believed he owed a great deal of it to the Lord *Hallifax*; and several Times he heard him say, that the Lord *Hallifax* had been kind and serviceable to him.

That the Duke said, The King told him, that he must submit to be ask'd Questions in publick, concerning the Plot; and must submit to him, and not contradict him.

That within two or three Days after the Duke surrender'd himself, he shew'd him a Paper, which was a Declaration, or seeming Confirmation of the Plot, with which the Lord *Russel* and Colonel *Sidney* were charged; and he thinks the Paper was sign'd with the Duke's Name to it.

That the Paper which the Duke got from the King was not the same with the other; and he believes he did not see that Paper: That the Duke told him, after the Paper had been sent to the Council, that he had sign'd such a Paper: He

understood in general from him, that this Paper was a Confirmation of the Plot the Lord *Russel* and Colonel *Sidney* suffer'd upon.

That he thinks the Duke told him, the Lord *Hallifax* perswaded him to sign that Paper; the Reasons he us'd were, That he might keep at Court, and be near the King, or else he must go from thence.

*Anthony Row*, Esq; deposed, That the Duke of *Monmouth* sent him to the King with two or three Letters, whom he found very angry with him, for the Company he kept, and particularly the Lord *Howard*, who, he said, was so ill a Man, that he would not hang the worst Dog he had on his Evidence.

That he heard the Duke had a Paper given him from the King to consider of; he seem'd unwilling to sign it, but at last consented, so he might not be ask'd to sign any other; he being in the Bed-Chamber when the King told him he should not: Whether he sign'd it or not, Mr. *Row* knows not.

That this Paper was given to the King, and shew'd to the Council; but they not liking it, it was either burnt or torn, and another Paper drawn.

That about that Time, something of this being put into the *Gazette*, Mr. *Row* acquainted the Duke with it, who was displeased at it; and bid them tell every body they met, that it was false.

That Mr. *Row* doing so in the Coffee-House that Night, the King was acquainted with it; and sent for him early the next Morning, and chid him; and told him, he did the Duke more hurt than he was aware of, and commanded him to speak no more of it.

That the Duke told him, he was resolv'd not to sign the second Paper: That one Day afterwards, he and *Godfrey* and *Barker* were in the outward Room, and the Lord *Hallifax* was with the Duke and *Dutchess* in her Room; and the Duke came out to them once or twice, and at last said he had done it; and that Night he seem'd angry with himself that he had sign'd the Paper, for that it might hurt others, and that if it had concerned none but himself, he had not cared; but said, he would not rest till he had the Paper again, and the next Morning he told him he had got it.

That the Duke told them, that the King had often press'd him to sign it, and told him he should never see his Face more, if he did not do it; but if he would, he should ask him nothing but he would grant it: But when he did sign it, he knows not, nor that there was any in the Room, but the *Dutchess* and the Lord *Hallifax*.

That the Duke told him, after he came out, that the Lord *Hallifax* had over-perswaded him, and made him do it; and engaged to him, the King should never let the Paper be seen; and said, This was the Time to gain the King's Favour: It being long ago, Mr. *Row* declared these Things, as he believes, and to the best of his Remembrance.

Mr. *Robert Yard*, being examined, declared, That the Advertisement concerning the Duke of *Monmouth*, which was put into the *Gazette*, was what was handled in Council, the Day after the Duke came in: It was the giving an Account of what pass'd betwixt the King and the Duke.

That



That he had the Paper either from the Lord *Sunderland*, or Sir *Leoline Jenkins*.

*John Hamden*, Esq; declared himself thus; His Case is so twisted with those of the noble Persons, whose Murders you enquire after, that he knows not how to speak of theirs, without relating his own; and that he looks upon himself almost as much murder'd as any of them, by reason of his Sufferings.

My Lord *Russel*, and Col. *Sidney*, were clap'd up in the *Tower*; after which, he was sent for, and brought into the Cabinet Council, or select Number of Lords, and ask'd, Whether he was of the Council of Six? (so the Lord *Howard* was pleas'd to call it :) He saw there the King, the Lord Keeper *North*, and Lord *Hallifax*; there were some others present, whose Faces he did not see; he does not remember a Clerk with them; my Lord Keeper asked some Questions, and so did the King. He was press'd much to confess; he claimed the Liberty, as an *Englishman*, not to accuse himself; he was sent to the *Tower*, and made close Prisoner; he was kept in the strictest Custody for twenty Weeks; when he had been there, after the Lord *Russel* was executed, he had an Intimation, by a private Note, that there was an Intention to try him for a Misdemeanor; he was bail'd out upon 30000 *l*.

After this, it happen'd the Duke of *Monmouth* came in, and had a Pardon; but several coming to see him, he spoke some Things freely, which did not please the Court; and at the old Dutcheffs of *Richmond's*, he spoke as if those Gentlemen that were put to Death, died unjustly.

Whereupon, after the King was told this by a Lady, he would have him confess his being concern'd in the Plot; and a Paper was drawn to that Purpose, which the King would have him sign, which he did.

A Gentleman, viz. Sir *James Forbes*, came to him from the Duke, with the Copy of the Paper the Duke had sign'd, to own the Plot; as soon as he saw it, he said, It was a Confession of the Plot, and according to the Law then in Practice, it would hang him; because a Paper had been given in Evidence against Col. *Sidney*, upon which he was condemn'd: For if a Paper which was said, and not proved to be writ by him, could supply the Place of a second Evidence; then a Paper which could be proved to be written and sign'd by the Duke of *Monmouth*, might much more properly be made use of as his Evidence, to hang other People.

He said, he was told by Sir *James Forbes*, that the Duke, who was in a manner forced to do it, and persuaded and overborne in it by the Lord *Howard*, when Sir *James Forbes* went back, the Duke was concern'd to Madness, and said, If he lived till next Day, he would have the Paper again; and accordingly he went to the King, and told him he could not rest till he had it; the King, with great Indignation, threw him the Paper, and bid him never see his Face more, and he believes he did not; and so the Duke went away, and by that he escaped the Trial then.

He was told by Mr. *Waller*, who is since dead, That the Duke's owning the Plot to the King, was the Cause of Col. *Sidney's* Death; for the King ballanced before.

He was, after this, brought to a Trial for Misdemeanor, and was convicted on the Lord *How-*

*ard's* Evidence. He pleaded *Magna Charta*, that a *Salvo Contentamento*; but the Court fined him 40000 *l*. and Imprisonment till the Fine paid, and Security for the good Behaviour.

The King made his Choice of putting him in Prison, and he was committed to the Marshal's House in the *King's-Bench*, where he was ten Months.

He offer'd several Sums of Money, and they answer'd, they had rather have him rot in Prison, than he should pay the Fine.

After this, they put him in the common Prison, where he was kept ten or eleven Months, very close; then they contrived a Writ call'd a long Writ, to reach his real and personal Estate, whilst he was thus a Prisoner.

After this, he heard a new Witness appear'd, which was after the Defeat of the Duke of *Monmouth*. He was sent close Prisoner to the *Tower*, by the Lord *Sunderland's* Warrant; and put into such a Room, where he had no Conveniency, and with two of the rudest Warders in the *Tower*, to lie in the Room with him.

After seven or eight Weeks, he was removed to *Newgate*, where he was kept close eleven Weeks; his Friends offer'd Money for his Pardon to some in Power, who were the Lord *Jefferies*, and Mr. *Petre*; the Sum was 6000 *l*. and that was effectual. It is not possible for a Man to suffer more than he did.

By the Help of the Money, on Condition he would plead Guilty to his Indictment, he was to come off.

His Friends advis'd him to it, because he could hurt none; there being none living of those call'd the Council of Six, but the Lord *Howard*.

Whereupon, pleading Guilty, he was discharged; paying 3 or 400 *l*. to *Burton* and *Grabam*, for the Charge of his Pardon.

As for the Subject-matter of what he confess'd, no Man will think he ought to be ashamed, that thinks my Lord *Russel* was murder'd; and he said, This was the Way that our Ancestors always took, when the Sovereign Authority came to so great a Height; as may be made out by many Instances: He said, Custom had made this the Law of *England*; and that all civilized and well govern'd Nations about us had used the same Way.

Notwithstanding his pleading Guilty, he hath been very ready to secure the Kingdom; and he was one of the two or three Men, that received Letters from *Holland* of this Revolution: And he saith, he thinks King *William's* coming into *England*, to be nothing else but the Continuation of the Council of Six; and if not, he desires to be better inform'd.

Being ask'd by the Lord *Howard*, how he came to send his Wife to the Man, whom he thought was instrumental in obtaining the Paper, which he thought endanger'd his Life? he answered, Did he not send his Wife to the Lord *Jefferies*, Mr. *Petre*, and others? Who should he send to but to those in Power? and who could help him but those in Power?

He did not think that the Lord *Howard* struck directly at his Wife, or that his Lordship had any personal Pique against him, but against the Cause he was engaged in: His Wife did go several Times to the Lord *Howard*, and by her he believes he sent him Thanks: He knows no solid Effects of his Kindness; if there were, he desires

desires the Lord *Howard* to tell him in what : He believes no Part of the 6000*l.* was given to the Lord *Howard*.

He never heard any thing of the Duke of *Monmouth's* Confession of the Plot, till after the Paper was sign'd by the Duke, and sent to him : He has heard it as common Talk, that the Duke had confes'd a Plot, and that Mr. *Waller* told him so indefinitely ; he could not tell whether he meant before the signing the Paper, or no : He saith, what the Duke did at that Time was all of a piece, whether speaking or writing ; he is sure that it was with the utmost Reluctancy that the Duke sign'd the Paper.

He remembers no more in the Cabinet Council, but the Lord *Radnor*, besides those he has already named ; but believes there were three or four more.

He was bail'd the 28th of *November*, 1683, and Colonel *Sidney*, he thinks, was executed the 5th of *December* following.

The Duke of *Monmouth* appear'd very firm to him, and engaged to do his utmost to save Col. *Sidney*.

He saith, he came out of the *Tower* some Days before Col. *Sidney* was executed : He had an Intention to have visited him, but his Friends thought it useless, and dangerous to them, and that he might write any thing he had to say : Accordingly, he wrote to him, that he would come to him, if he desired it ; but Col. *Sidney* charged him not to come, but to write, if he thought any Inconveniency would come of it. The Messenger which brought him the Message before-mention'd, was Dr. *Hall*, now Bishop of *Oxford*, who applied to the Dutches of *Perismouth* for his Release ; but her Answer to him afterwards was, that she had try'd, and could do nothing, for they would rather have him rot in Prison, than have the 40000*l.*

Dame *Katbarine Armstrong*, being examined, deposed, That she demanded a Writ of Error of the Curfitor of *London*, for Sir *Thomas Armstrong*, and told him she was ready to pay all due Fees ; but he told her, she must go to the Attorney General ; and she demanded it publickly in Court of the Lord Keeper *North*, but he said it was not in him to give, but the King.

Mrs. *Jane Matthews*, being examined, said, That her Father was sent to Prison, and could have no Council admitted to him, nor any Friends speak with him, but in the Presence of his Keeper : He had one Chain on him, and was kept close Prisoner. She saith, she questions not but to prove the Lord *Howard* perjured ; for Sir *Thomas* could have proved by ten Gentlemen, and the Servants of the House, those base Reflections the Lord *Howard* made on him, to be Falshoods.

She saith, her Father demanded his Trial, and also Council, in the Court, but was denied both ; the Chief Justice *Jefferies* telling him, they had nothing but the Outlawry to go on. *Withens, Holloway*, and *Walcot*, were the other three of the Judges ; and she thinks he was brought from on board the Yacht by the Lord *Godolphin's* Warrant.

She saith, Mr. *Richardson* beat her Sister while she was asking her Father Blessing.

She saith, That her Father was at *Sparrow's* at Dinner, that Day that the Lord *Howard* swore  
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he was not : And she saith, That when her Father in Court said, *My Blood be upon you*, the Lord Chief Justice *Jefferies* said, *Let it, let it ; I am Clamour Proof.*

'Mrs. *Katbarine Armstrong*, being examined, saith, That Captain *Richardson* used her Father ill, and made him lie in a Chain on one Leg ; and would not let her see him alone ; and was rude to her, and struck her in such a Manner, that she had so fore a Breast, that she could not put on her Bodice in three Quarters of a Year.

She saith, she went with her Mother to the Curfitor of *London*, to demand a Writ of Error, but he refused it.

She went also on the same Errand to the Lord Keeper *North*, Mr. Attorney, and the Lord Chief Justice, but had none.

Mr. *Richard Wynne* declared, That he was Solicitor to Col. *Sidney* : That the Colonel excepted against several of the Jury ; to some, as not being Freeholders ; and others, as being in the King's Service, and receiving Wages from His Majesty.

That presently after the Trial, the Lord Chief Justice sent him Prisoner to the *King's-Bench*, for saying the Jury were a Loggerheaded Jury, and that they had not Evidence sufficient to find such a Verdict, or found a Verdict contrary to Evidence.

Mr. Serjeant *Rotherham*, being examined, declared, That he was of Council for Col. *Sidney*, and drew a Plea for him ; which the Colonel desired to have read ; and threw it into the Court : It was to distinguish the Treason laid in the Indictment, and quoted the three Acts of Treason ; but the Court told him, if the Plea had any Slip in it, he must have Judgment of Death pass on him immediately. After this, he pleaded Not Guilty.

That he demanded a Copy of the Indictment, as his Due, but the Court refused it him : That Col. *Sidney* told him, that they proved the Paper they accused him of, to be his Hand-writing, by a Banker, who only had his Hand upon a Bill. Col. *Sidney* quoted the Lady *Carr's* Case, in the *King's-Bench*, *Trinity Term*, 1669, *Anno 21 Car. 2.* wherein it was adjudged, That in a Criminal Case, 'tis not sufficient for a Witness to swear he believes it to be the Hand, but that he saw the Party write it : The Words in the Case are, That it must be proved that she actually writ it, and not her Hand *ut credit*.

That Col. *Sidney* ask'd him, with the rest of the Council, Whether all the Book should be read at his Trial ? The Council said, it ought. The Book was by way of Questions, and meerly a polemical Discourse of Government in general, as far as Serjeant *Rotherham* could find, after reading in it several Hours : He believes it consisted of seven or eight Hundred Sheets.

Mr. *Joseph Ducas*, upon his Examination, informed the Lords in Substance as follows ; That Colonel *Sidney* was taken up by a Messenger, before there could be any Pretence of Proof against him ; for the Lord *Howard* (the only Witness) was not seized 'till fourteen Days after.

That when Sir *Philip Floyd* seized and carried away Col. *Sidney's* Papers, he promised him, that  
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the Trunk and Pillowbeer, in which they were seal'd up, should not be open'd, but in the Colonel's Presence; but that Promise was not perform'd.

That they seized the Colonel's Goods and Money in the City and Country, five or six Months before any Indictment was found against him.

That the Colonel was brought to *Westminster* the 7th of November, by an *Habeas Corpus*, sent the Day before, to be arraign'd upon an Indictment, though no Indictment was then found against him; and they kept him in a Tavern in the *Palace-Yard* an Hour, 'till they had got the Grand Jury to find the Indictment.

That the Colonel being carried to the Court of *King's-Bench*, and the Indictment read, he demanded a Copy thereof, but the Court refused it. That the Colonel offered a Special Plea engrossed in Parchment, and desired it might be read; but the Chief Justice said, That if the Attorney General demurr'd, and the Plea were over-ruled, Judgment of Death should pass upon him; (and *Witbens* said, If your Plea be over-ruled, your

Life is gone,) and so he was forced to plead Not Guilty.

That he challenged several of the Jury, as being the King's Servants; and others, as not being Freeholders; but was over-ruled therein. Some Gentlemen (and very worthy Persons) were, for Fashion-sake, put into the Pannel, and call'd, but did not appear; and, it may be reasonably thought, they were never summon'd.

That Col. *Sidney* was inform'd, that when the Jury was withdrawn, the Chief Justice, under Pretence of going to drink a Glass of Sack, went to the Jury, when they were consulting about their Verdict.

That when it was demanded of the Colonel, what he had to say, why Judgment should not pass, he urged several Points of Law, but was over-ruled in every thing.

To this Effect was the Information of Mr. *Ducas*, a very valuable *French Protestant* Gentleman and Col. *Sidney's* Friend.



## N U M B E R   X X X I .

*A true Copy of Part of that Paper, which Mr. Ashton left in a Friend's Hands: Together with a Letter in which he sent it enclosed.\**

[The Paper begins with the Speech already publish'd, immediately after which he adds.]

**T**HUS much is contain'd in the Paper that I design to leave with the Sheriff. But being suddenly to give up my Accounts to the Searcher of all Hearts, I think it a Duty incumbent upon me to impart some Things farther, which neither the Interest nor Iniquity of these Times will, I conclude, willingly bear the Publication of, and therefore not fit to be insert'd in the Sheriff's Paper.

Some time after the Prince of *Orange's* Arrival here, when it was expected, that pursuant to his own Declaration, and the King's Letter to the Convention, an exact Search and Enquiry would have been made into the Birth of the Prince of *Wales*, there was a Scheme drawn up of that whole Matter, and of the Proofs that were then, and are still, ready to be produced, to prove his Royal Highness's Legitimacy; but no public Examination being ever had, and the Violence of the Times, as well as Interest of the present Government, not permitting any private Person to move in it, those Papers have ever since lain by: But it being now thought adviseable by some, to have them printed and published, and (as at first they were design'd) address'd, at their next Meeting, to the Lords and Commons, en-

treating them to enquire into that weighty Affair, and to call forth, examine, and protect (for who else dares to appear) the many Witnesses to the several Particulars therein offer'd to be legally proved, &c.

I was ordered to carry those Papers to the King my Master, for his View, that his Leave and Approbation might go along with the Desires of his good Subjects here; and they being taken with me, with some other Papers of Accounts, &c. in a small Trunk, amongst my Linnen, and other private Things of my own, and not in the Packet, (my Lord *Preston* being altogether a Stranger to the whole Proceeding,) by this Means fell into the Hands of our present Governors; who, though they wisely waved the producing them as Evidence at my Trial, yet have I just Reason to believe my greatest Crimes were contained in them; and I do therefore conclude and hope, that I only am designed to be sacrificed, who only knew of them. Nor am I surprized at it, since nothing, I think, can be more prejudicial to some Persons present Interest, than the exposing of those Papers to the Publick, which will set that pretended Mystery of Dark-ness in so clear a Light, that all Mankind must be

\* This to be read after *Ashton's* Speech in *State Trials*, Vol. 4. Pag. 483, 484.

convinced of his Highness's being born of the Queen; and of their Wickedness, who have maliciously and designedly asserted that innocent Prince to be an Impostor. The Love and Compassion that I have for my native Country, as well as Charity, obliges me humbly to implore Almighty God to be merciful to it, and not to charge this great Sin to the publick Account, and that we may not farther provoke his Justice, by our wilfully continuing in Error and Mistake. I beseech him to put it into the Hearts of the Lords, &c. at their next Meeting, to examine into that whole Matter, and (if before that Time this be published) to enquire after, call for, and, if possible, retrieve those Papers that were taken with me; whereby the Obstinate will most certainly be convinced, the Ignorant inform'd, the Doubtful confirm'd, the Eyes of all open'd, and a sacred most important Truth made apparent to the whole World.

What I have next to impart, is not less material, &c.

*[But I do not think it a proper Time to publish what follows next, and therefore, according to the Will and Desire of my dead Friend, expressed in his following Letter, 'tis reserved to a fitter Opportunity; and shall now only insert what he wrote to me, relating to Mr. Elliot.]*

But I must not end this Paper till I have done one Act more of Justice, as well as Charity, in behalf of my Fellow-Sufferer, Mr. Elliot, who was, as I do most sincerely believe, altogether ignorant, not only of the Contents of the Papers, but even of the Papers themselves, and no way concern'd, but as a Passenger; and yet, if Providence had not prevented our being all tried together, as was intended, that innocent Gentleman had most certainly shared in our Fates; for the Proofs, even at my Trial, lay stronger against him than myself: For Captain Billop did then, upon Oath, (unnecessarily, I think,) declare him to be much more concern'd and importunate than I was, to have the Pacquet thrown over-board; and yet singly from my being concern'd, and speaking to him on that Subject, a presumptive Evidence (sufficient, as it proved, with that Jury to find me Guilty upon,) was drawn, that I

knew what was contained therein. But I do most heartily forgive them, and pray to God, that this poor Gentleman, by gaining of Time, may escape better, and that his innocent Blood may not be shed: And I hope these Words of a dying Man (though no legal Proof) may have some Weight with an impartial, conscientious Jury (if such a Jury he can get) whenever he is brought to his Trial:

John Ashton.

*[This Paper, &c. came enclosed to me from Mr. Ashton, before his Execution, in the following Letter.]*

S I R,

**K**Nowing your Friendship and Fidelity, to your, and your only, as unto safe and secure (though distant) Hands, I recommend the enclosed Papers; what chiefly relates to myself, being the first Part, I design to leave with the Sheriff; nor shall I be anxious about his Disposal of it: But the following Paragraphs, that concern the Prince of Wales, and —, I beg you to preserve as Jewels, and publish them, either part or all (chiefly that about the Prince) whenever Time or Occasion seems to permit or require. And as to the Fitness of either, you may be pleased to consult A. B.'s Advice; I doubt not but sooner or later they will all be useful: And that you may the more value them, I do most solemnly protest, I have been as careful in what I have asserted for Truth, as if I were now at God's dreadful Tribunal; where I expect suddenly to appear, and by his Mercy hope to hear that ravishing Sound, *Come, ye blessed, &c.*

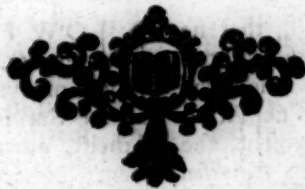
What relates to Mr. Elliot, though I design to declare as much to some, who at his Trial may give it in Evidence, yet I thought it just to leave a Record of his Innocency under my Hand.

I have nothing to add, but to request your Prayers, That God of his infinite Mercy would support and strengthen me in my last Moments, and take to himself,

Sir, Yours,

John Ashton.

Newgate, Jan.  
27, 1690-1.





## N U M B E R XXXII.

*A true Account of the Behaviour, Confession, and last Dying Speech of Captain Harrison : Together with the Paper writ by his own Hand, and delivered to a Minister at the Place of Execution, on Friday the fifteenth of April, 1692. \**

[ By Samuel Smith, Ordinary of Newgate. ]

**H**ENRY Harrison found guilty of the wilful, barbarous Murder of Dr. *Clench*. He was bred up a Lawyer's Clerk; afterwards he listed himself to be a Trooper in the Lord *Dartmouth's* Regiment. Upon the tenth of *January* last, he offered to discourse with me upon the Cause of his Confinement: I desired that whatever he said, he would do it in the Presence of the Heart-searching God, and as if he were at the Point of Death: He did profess he would do so. He said, that he had been arraigned before for Murder; but it was only found *Manlaughter*: That he did not after this walk so circumspectly as he ought, but was guilty of prophaning the *Sabbath*, and many gross Sins, which he lived in very securely; but that God by this Distress had awakened him to call to mind those great Sins which he had committed, saying, that God had strange Ways to bring Sinners to Repentance. Upon this I advised him sincerely to justify God, as righteous, in finding him out in his Iniquities; or else Death would be more terrible, and his eternal State very hazardous, if he now trifled with God, and did not ingenuously confess his sinful Course of Life. Hereupon he spoke very vilely of himself, as having been of a dissolute Life; that he seldom minded the Publick Worship of God, nor the Private Duties of Religion; that he was a common Swearer in ordinary Discourse, and guilty of notorious Sins; that he never received the Sacrament of the Lord's Supper, because it is an Obligation to amend an evil Life; which he being accustomed unto, he forbore the Sacrament, that he might not aggravate his Sins and future Condemnation. I told him, that his being unwilling to come under such a Sacred Tie of Reformation, exposed him deeper into *Satan's* Snares of Temptation.

After this, he freely acknowledged, that he had some Acquaintance with Dr. *Clench*, and too much Familiarity with the Woman to whom the Doctor lent Money; and that upon his not liking of the Security given for the Repayment, the Doctor would not forbear any longer: *Harrison* said, this did fret him, yet he used no threatening Words; and said, that if his Son had been accessory to so barbarous a Murder, and himself knew it, he would discover him. *Harrison* made frequent Appeals to God, that he knew nothing of this Crime, in Thought, Word, nor Deed. I

replied, that if he made any false Appeal to God, it would very much hazard his Salvation; yea, that this would bring swifter Destruction upon him; and that his persisting to deny the Murder, would make him to be less credited; because two Persons who lately murdered their Wives, imprecated themselves if they knew any thing of it, and yet, after an Hour's denying of it at the Place of Execution, confessed it at last. I told Mr. *Harrison*, that he would be an inveterate Atheist, if he should dare to die with an execrable Lye in his Mouth: He said, after all Advice, that he would at his Death deny that he knew any thing of the Murder of Dr. *Clench*: He confessed, that he could not reflect on the Justice of the Court, nor the Integrity of the Jury in their Verdict, who had proceeded according to what was deposed against him; and that he expected that the Sentence of Death would pass upon him; yet he blames the Witnesses for their being so positive in their Allegations against him, when himself is clear of Murder in his Conscience: He said, that God had justly suffered a shameful Death to befall him, because he lived so long in an habituated Course of Viciousness, without any Remorse for it till now.

This is all the Account I can give of Mr. *Harrison*; though I frequently, with others, solicited him to an ingenuous and free Confession of his Crime, assuring him, that if he durst die in the Denial of it, by any mental Reservation, or Equivocation, he would merely ruin his Soul eternally.

*A Copy of the Paper writ by Captain Harrison's own Hand, and delivered to a Minister at the Place of Execution.*

**N**OW I am come here to die, the People expect a Speech and Confession; for the Words of dying Men always ought to be believed by the Survivors. I thank God, I am not an Atheist, nor a Man that makes Equivocations or mental Reservations; but was educated in the Protestant Religion. The greatest Grief I have (next unto my offending my great and gracious God) is that of my Relations; for no Disaster was ever in the Family before, (but I pray God give them Comfort) being all of them People of Reputation, as is well known to a great many

in this Town, I having had some Differences with some of them. I do own I lived for some time an irregular Life, which was displeasing to them; God forgive me for it: And it was for my Sins God thought fit, out of his infinite Justice, to suffer this heavy Affliction to come upon me; which I firmly believe tends for my everlasting Salvation, through the Merits and Mediation of Jesus Christ my Saviour, who came into the World to save Sinners, and me the chief, as I have acknowledged and reputed myself; I assuredly now hope for Mercy at his Hands, being innocent of this black, bloody, inhuman Murder I now die for, in Thought, Word, or Deed, heartily forgiving those that were the Authors of it; as also pray to God to forgive

them, as I humbly beg of those I have in any wise wronged to forgive me; desiring all that see me this Day to live a godly, righteous, and sober Life, to the end that they may attain everlasting Life, through Jesus Christ our Lord. Amen.

God bless the King and Queen, and the present Government, my Judges and Jury; the rest I refer to a small Treatise I have left with my Friends, concerning the Occasion why I was suspected to be one of the Murderers of Dr. *Clench*; which I have desired them to publish very suddenly after my Death.\* Farewel, in the Name of God. Amen.

God reward all those worthy Divines who have assisted me in my heavenly Journal since my Condemnation.

\* The Book here spoken of, intituled, *The last Words of a dying Penitent*, containing a long, tedious Account of his Acquaintance with Mrs. *Vanwick*, and his Defence on his Trial, which is already printed, was not thought proper to insert.



N U M B E R XXXIII.

*The CASE of Spencer Cowper, Esq; John Marson, Ellis Stephens, and William Rogers, Gentlemen. †*

[ *Published by them in 1699.* ]

*First, in General.*

THE said four Gentlemen were in very good Employments, and easy in their Circumstances; Mr. *Marson* and Mr. *Stephens* are Attorneys at Law in good Business, and Mr. *Rogers* a Scrivener in *Queen-Street, London*, and of unspotted Reputations; the last an utter Stranger to Mr. *Cowper*; when at once they were accused of being together, with the basest and most execrable Crime that the greatest Villain in the World is capable of committing.

Nay, in one Respect, they were accused of doing what the most hardened in Wickedness never did; that is to say, of having contracted the Guilt, and run the imminent Hazard, of Murder, without any Temptation or Provocation to it, or other Cause whatsoever.

For it has pleased the Providence of God to fence their Innocence with such Circumstances, that their very Enemies and Prosecutors (though, to make their Calumny to gain Credit in the World, it was necessary they should assign some Cause; and therefore they made it be reported, That it was done for the Sake of Gain to Mr. *Cowper*) never once had the Impudence at the Trial so much as to suggest the same, or any other Cause, though often put in mind of it: Nor can they yet, with all their Malice, invent, much less prove, the least Ground or Reason that could incite them, or any of them, to the committing a Sin so unnatural in itself, and so generally detested

and punished, as well in this World as that to come.

And all this without any Proof that a Murder was committed by any one; it being the Verdict of the Coroner's Inquest, fairly impannelled (on the fresh View of the Body, on consulting two Surgeons and a Midwife, who then had the View likewise, and a full Examination, which lasted near six Hours) That the Deceased drowned herself, being *Non compos mentis*: And 'tis humbly presumed, that all unprejudiced Persons who heard that Matter fully canvassed at the Trial, on the entire Circumstances of the Case, were convinced there was no Ground to believe the contrary.

So that nothing but the Zeal of some Quakers for the Reputation of their Sect, to clear it from being liable to the same Infirmities the rest of the World are, assisted by the Heat of Faction, which is in most Boroughs, could ever have stirred up a Prosecution, and have made so much Noise in the World with it, out of such Matter.

*Next, as to Particulars.*

Mr. *Cowper*, the Day on which the Deceased's Body was found, was examined, among many others, before the Coroner's Inquest; and which is very remarkable, did then freely give an exact and full Account of every the least Circumstance of Fact that has been at any time since proved, or pretended to be proved against him, throughout the whole Prosecution.

† This, and the following Case, though so material, are omitted in *State Trials*, Vol. 5. and should be read (after the Trial of *Spencer Cowper*, Esq; in that Volume) Page 232. And as that Murder made so great a Noise, and the honourable Person accused having made so considerable a Figure in Life, it's thought proper to insert those curious Things that were wrote at that Time relating to it.



When the Circuit was ended (for this Accident happened whilst the Assizes were holding at *Hertford*) which unhappily drew these Gentlemen to that Town, about a Month after the Sitting of the said Coroner's Inquest, the said four Gentlemen were severally sent for, and readily came to the Lord Chief Justice *Holt*, and were examined; and what they then informed the Chief Justice of, on such sudden and several Examinations, has not been falsified or contradicted in the least, but on the contrary was constantly adhered to, and at last proved and made good at their Trial.

That after their said first Examination they were dismissed without Bail, and thereby had an Opportunity of flying; as undoubtedly they would have done if conscious of any Guilt. Then they were sent for a second time and examined, and admitted to Bail; and afterwards (the Prosecutors having in the mean time collected several Informations and Certificates, containing Observations and Opinions of the Posture and Manner in which the Deceased's Body was found, and what appeared on View thereof, five Weeks after it had been buried by the Prosecutors, and used before as they pleaded) Mr. *Cowper* and Mr. *Marson* were committed, and the other two still continued upon Bail.

It is remarkable, that in procuring these Informations and Certificates, and in the whole Conduct of the Process (so far as carried on in the Country) the Prosecutors applied themselves at *Hertford* to those very Persons, and those only, who they knew were professed Enemies to Mr. *Cowper's* Relations, upon account of Controversies arising at Elections, and otherwise.

Mr. *Marson*, on his *Habeas Corpus*, was afterwards admitted to Bail: But Mr. *Cowper* appearing in the *King's-Bench* on the like Writ, the Court was equally divided as to his being bailed, and consequently he was remanded to Prison.

There he lay all *Trinity Term*, 1699, and part of the long Vacation, for the Space of two Months, till the Assizes at *Hertford* drew near; and then, upon enquiring at the *Crown Office*, not hearing that any Writ was sued out for his Removal, in order to his Trial at *Hertford*, he caused a Writ to be issued out for that Purpose, fearing his Enemies designed to keep him in Gaol, or at least to continue the Slander and Prosecution, as long as they could: The Prosecutors understanding this, sued out the like Writ at their Instance; and Mr. *Cowper* was removed on that Writ, left going on his own Writ should have shewn too great a Confidence in his Innocence; which was not to be endured.

These few Steps of the Proceeding, out of many of the like Nature (which are omitted to avoid Length) may serve to shew that the Prosecution was far from being a faint one, but was industrious and artificial to the last Degree, and was (unluckily for the four Gentlemen concerned) assisted by a Circumstance not material to the Justice of their Cause, but notoriously true; That an Election-Interest was thought in great measure to depend upon carrying on the Accusation: Which was the harder upon the four Gentlemen, for that none of them were at all concerned in that Controversy, and three of them not so much as in a Wish one way or other.

Notwithstanding this unhappy Juncture, on their Trial their Innocence was so clear, that

they were acquitted, to the Satisfaction of all indifferent Persons there present.

After the Trial, which was at the Summer Assizes, in the Year 1699, their Prosecutors, that they might be further vexatious, and keep up the Talk against these four Gentlemen (though they had nothing to object to the Fairness of the Trial, or any Defect in their Preparations towards it) immediately sought out for an Heir Male to bring in an Appeal, to try them again, and put them to fresh Charges, and keep them longer under the Suspicion of so great an Infamy on the very same Evidence, without any Pretence of the least Addition to it.

In the same long Vacation, 1699, they found out the Infant *Henry Stout* (whose Name was afterwards made use of for bringing the Appeal) and might have sued out the Writ of Appeal either before the then next *Michaelmas Term*, or in it, in the Vacation following, or in *Hillary Term* after; but their End was purely malicious to crush the Accused with the Calumny; and therefore, to keep up the same as long as possible, the Writ was not sealed till the very last Seal within the Year after the Deceased drowned herself, and not above three or four Days before the End of that Year (the Time limited by the Law for bringing such Writ) and then too without the Consent, nay without the Privy or Knowledge, either of the Plaintiff himself, or of his Mother (his Guardian by Nurture) without whose Approbation the Writ, by Law, should not have been sued out, nor an Infant engaged in such a Prosecution for Blood, which after a fair Acquittal is adjudged innocent.

About a Month after the said Time limited by Law for the bringing the said Writ was passed (after several Letters had been sent to the same Person, which made no Mention of the Appeal) a Letter was sent either from some of the Prosecutors, or by their Order, to an Aunt of the Infant, desiring the Child might be sent up to sue an Appeal; which the said Aunt said she read to the Mother, and was the first Notice pretended to be given; but the Aunt being asked (when this Matter was examined before the Lord Keeper) if she then knew the Meaning of the Word *Appeal*, she owned she then did not; and the Mother, to whom the Letter was read, affirmed before the Lord Keeper, she did not then know what it meant, it not being explained in the Letter; but that she imagined it was some Proceeding in order to put her Child into Possession of the Deceased's Estate, or some Part thereof, which the said *Mary Stout* (to induce the Mother to part with her Child, and help the said *Mary Stout* to prove his Pedigree) had before fraudulently caused to be insinuated to her.

And thus the Appellant or his Mother (who only could legally do it) were so far from having sued out this Writ within the Year and Day, that they never heard of it till a Month after, and then only as aforesaid; so that the said Writ was unlawfully sued out.

As soon as the Mother and the Infant (the Plaintiff) came to understand what had been doing, and that nothing was done towards letting the Child have any Part of the Estate, but only to prosecute a Suit of Revenge after an Acquittal against Gentlemen of good Characters, and where no Murder at all had been proved; they declared

declared their utter Dislike of the Proceeding, and, without so much as treating with any of the said four Persons prosecuted, or with any employed by them (purely from an Abhorrence of the Action, and their Repentment of the Cheat put upon them, and the Advice of their Friends, as contrary to good Conscience, and their Interest, to let *Mary Stout* the Petitioner have the proving the Infant's Pedigree in an Appeal, which was his Title to the Lands in *Mary Stout's* Possession) went with an Uncle and Aunt of the Infant, and demanded the Writ of the Sheriff, tendering him his Fee for the Return thereof, which he (not then knowing of any Guardian assigned) delivered to them: And though it should be admitted that the Sheriff in so doing did not strictly pursue the Mandate of the Writ, which requires a Return at the Day in Court; yet the same Mandate is in most original Writs, and notwithstanding the Sheriff never scruples to deliver the Party his own Writ, with the Return. And in this Case the Plaintiff and his Mother, and two of his nearest Relations, demanding the Writ, and the Sheriff having no Notice of any other Guardian, it seems as excusable in the Sheriff, as if a Plaintiff of full Age had come for his own Writ: But it is admitted the Court of *King's-Bench* was of Opinion, That the Sheriff in Strictness is to return his Writ at the Day and Place mentioned in the Return; and for not doing so, the Sheriff was fined, and paid two hundred Marks.

The Sheriff, before the said Fine, was, by Order of the *King's-Bench*, examined very strictly on Interrogatories in Writing, tending, among other things, to discover how far the Appellees were concerned in procuring the Writ from the Sheriff; to which the Sheriff answered on Oath fully, in Writing, and very truly denied all Correspondence with the Appellees, or any on their behalf, touching the Delivery of the said Writ, all Reward, or Promise, or Security; and, in short, That he never knew of the Appellants and the other Persons coming to him, nor any ways had heard thereof, till he saw them: And then delivered the Writ and Return to them, as believing it fair and lawful so to do; and for no other Reason whatsoever.

Notwithstanding the Petitioner preferred her Petition to the now Lord Keeper (by Advice of her Council) to grant her a new Writ of Appeal in the same Form, as having sufficient Authority so to do: And the said Infant, the Appellant, and his Mother, preferred another Petition to the said Lord Keeper, disowning the former Writ, as sued forth without their Consent; that they never knowingly approved thereof; and desiring that no new Writ might issue in the Infant's Name: And the Lord Keeper, being assisted by the Master of the Rolls, the late Lord Chief Justice of the *Common-Pleas*, the Lord Chief Baron, and Mr. Justice *Powell*, one of the Judges of the *Common-Pleas*, the Appellant and his Mother appeared, and owned their said Petition; and on a full Hearing on both the said Petitions, and Council on both Sides, the said Lord Keeper, Master of the Rolls, Lord Chief Justice, Lord Chief Baron, and Judge *Powell*, were all of Opinion unanimously,

1. *That the Chancery had Power to relieve in such Case, and renew the Writ, if it were just so to do.*

2. *But, That in this Case it was not just or reasonable.*

The Reasons, then and yet, insisted on to maintain the latter of these Points, were these:

1. Because the Appellant Infant, or his Mother, Guardian by Nurture, had no Notice that the Writ was sued out, till above a Month after the Year and Day past; and consequently the Writ was never well sued out: It being in no body's Power, by Law, but the Appellant's, to sue out such Writ; and in Case of Infancy, as well as in the Case of an Appellant of full Age, the Writ is sued out in the Person of the Appellant, and should be done by the Consent of his next Friends; and no Guardian assigned hath any thing to do therewith till the Writ be pending.

2. Because it appeared, that as soon as ever the Appellant and his Mother knew what was doing, they renounced the said Writ, and, to prevent prosecuting the same, went and withdrew it from the Sheriff, together with an Uncle and Aunt of the Infant.

3. Because the Appellees were none of them in the least privy to this Transaction, nor did the Petition pretend to prove or alledge they were: But, on the contrary, the Sheriff, having been examined on the strictest Interrogatories that could be framed, had, on his Oath, acquitted all the Appellees from having the least to do in that Matter, but that he did it as conceiving it lawful and usual to deliver the Plaintiff in any Action his own Writ; and not knowing at that time that any Guardian was assigned to prosecute the same.

4. It is a Maxim in Law, That what is done amongst others ought not to hurt a third Person; and as the Appellees would have been delayed and kept under Calumny by this Means, without their Fault; so no Security could be given them that the new Writ should be literally the same with the former, as it ought to be; and no Writ being now legally to be prosecuted against them, they ought not to be deprived of the Benefit and Protection of the Law, without any Act or Default in them so much as pretended or assigned by the Petition.

5. The Infant, by Law Plaintiff in Appeal, has, notwithstanding his Guardian, such Power over the Suit, that three Cases were cited wherein the Infant was, by the Court, permitted to be nonsuited, without and against the Consent of the Guardian, assigned to prosecute the same; and no Instance is to be found, wherever an Infant was denied so to be nonsuited.

6. If an Infant may desist from prosecuting a Writ depending without Consent of his Guardian assigned, 'tis much more unreasonable such Guardian assigned should force the Plaintiff to have or sue out such Writ, especially to be restored to it whether he will or no, in an extraordinary Manner; which Reason is enforced in this their unprecedented applying to the legislative Power in this Matter.

7. To make good the last Reason, a Petition was preferred to the Lord Keeper by the Plaintiff and his Mother, against having the Writ, and disowning their Knowledge of the Effect of the former Writ; and both, with an Uncle and Aunt of the Plaintiff, appeared to justify that Petition; and the Woman avowed, that when she parted with her Son to sue the Appeal, she thought



thought that it was in order to obtain the Deceased's Estate, as the Petitioner had fraudulently induced her to believe.

8. The Appellant and his Mother insisted, that the Infant being Heir at Law to the Deceased, and so intitled to her Estate, unless some way diverted by Will or Settlement (which the Petitioner would never satisfy them in) and the Petitioner, with her Son *John Stout*, being in Possession of that Estate, they thought it very improper the Petitioner should have the proving the Plaintiff's Pedigree in an Appeal, which was his Title to an Estate the Petitioner held from him; for Recovery whereof the Infant, and his Mother, as Guardian, preferred their Bill in *Chancery*, which Suit is still depending.

These Reasons were enforced by several Considerations, shewing, that this Writ of Appeal of all others ought not to be favoured:

1. Because sued out clandestinely and fraudulently, as aforesaid, by one who had no Power.

2. Because deferred two whole Terms after the Acquittal on the Judgment, and not taken out till the last Seal, about four Days within the Year; which shews they did not design Justice, but to spin out a Scandal as long as they could, maliciously and vexatiously.

3. An Acquittal on Indictment, was a Bar to an Appeal at the Common Law; and though that Bar be taken away *Stat. H. 7.* (which let in the Indictment within the Year and Day) left Persons should procure themselves to be acquitted on Indictments by faint Prosecutions; yet, since this Prosecution was far from faint, the Appellees in this Case are within the Reason and Equity of that Plea; and the rather, for that the Petitioner, who would prosecute this Appeal, was the principal Prosecutor of the Indictment, and did it with all imaginable Industry, assisted by the united Interest of the Quakers, and the Prejudice of a Party in the Town of *Hertford*, disobliged on the Score of Elections.

4. Appeals have not been favoured since the *Stat. H. 7.* except in Cases of Conviction, and Pardon obtained by Surprise, or after some clear or fresh Discovery by additional Evidence; which neither is, nor can be pretended.

#### *The CASE of Mrs. MARY STOUT, Widow.*

**I**N *March*, 1699, being within the Space of a Year after the supposed Murder of *Mrs. Sarah Stout*, a Writ of Appeal was sued out of the High Court of *Chancery*, against *Spencer Cowper*, Esq; *John Marson*, *Ellis Stevens*, and *William Rogers*, Gentlemen, in order for the Trial of them, at the Suit of one *Henry Stout*, Heir at Law to the Deceased, and the Appellant named in the Writ of Appeal, who at the Time of suing out such Writ was about the Age of Ten Years.

*Mrs. Stout*, the Mother of the Deceased, after such Appeal was sued out, caused the same to be delivered to one *Mr. Bostock Toller*, the Under-Sheriff for the County of *Hertford*, in order for his apprehending of the Appellees mentioned in the said Writ. And she fearing lest he would be either remiss or unmindful in the due Execution thereof, some short time after she sent a Neigh-

bour of hers to *Mr. Toller*, to know what he had done, or would do, with the Writ; whether he had executed the same, or whether he would return the Parties were not to be found: Which Message was duly carried, with a particular Account, that *Mrs. Mary Stout*, the Mother of the Deceased, was the Person that sent the same. To which *Mr. Toller* returned this Answer, *Mrs. Stout is a very busy, uneasy Woman; but however, when the Writ is out, I will make such Return thereof as the Law directs.*

*Mrs. Stout* having received such an Answer, and expecting to have a Return of the Writ, according to *Mr. Toller's* Promise, on the thirteenth of *April* following, was in order thereto, and for the further designed Prosecution of the Matter, duly admitted Guardian to the Appellant; and as such, on the fifteenth of the same Month of *April*, being the first Day of the then *Easter-Term*, appeared personally in the Court of *King's-Bench*, in order to arraign the Appellees, in case the Under-Sheriff should have returned them taken.

Upon such Attendance of *Mrs. Stout*, *Mr. Toller* was frequently called, pending the whole Time the Court sate, (the Writ being then returnable) to make a Return of the Writ: But he made Default, and instead thereof *Mr. Marson*, one of the Appellees, appeared in Court, and prayed either to be arraigned or discharged; though the Writ was not then, or ever since, seen or returned in Court: So that such *Mr. Marson's* Motion appearing only to be a Shew, or Bravado, no Damage or Advantage being to be sustained or gained to him thereby, the same was rejected.

Upon the second Day of the same Term, the Court of *King's-Bench* was moved on the behalf of *Mrs. Stout*, that a short Day might be appointed peremptorily for *Mr. Toller* to make his Return. But then (though *Mr. Marson* knew of the Writ of Appeal's coming to *Mr. Toller's* Hand, as appears by his praying an Arraignment but the Day before) it was suggested in Court, That no Writ of Appeal was ever left with *Mr. Toller* against the Appellees: And upon such Suggestion, *Mrs. Stout* then lost the Benefit of her Motion, and was forced the next Day to get an Affidavit of the Delivery of the Writ, which she accordingly did; and thereupon she moving again for a peremptory Return, then the Under-Sheriff's Receipt of the Writ of Appeal was granted, and thereupon a Rule of Court obtained to compel him to appear, and make a Return of the Writ; which Rule was served, and thereupon *Mr. Toller* soon after attended, and by Affidavit informed the Court, That upon the sixteenth Day of the same Month of *April* (which was a Day after the Return of the Writ, and three Days after *Mrs. Mary Stout* was admitted Guardian to the Appellant) he delivered up the Writ into the Infant's Hand.

Upon which Account given by *Mr. Toller*, the Court of *King's-Bench* ordered him to be examined upon Interrogatories, touching the Delivery of the Writ; and accordingly *Mrs. Stout* the Guardian prepared the same, but could not without considerable Difficulty get him examined (being forced to be at the Charge of two or three Orders of Court, for that Purpose, before he came.) At last his Examination was taken, in and

by

by which he owns the Receipt of the Writ of Appeal; and that he was informed, that Mrs. *Mary Stout*, the Mother of the Deceased, prosecuted the said Writ; that she sent the same to him; and that the Infant, the Appellant, was a perfect Stranger to him, when he delivered it into his Hands: But then, to extenuate the Matter on his own Behalf, the Reasons he alleges in his Examination for such his Delivery, are, That the Appellant came with the Mother, Uncle, Aunt, and one Mr. *Woodford*, an old Acquaintance of his, for the Writ; and that Mr. *Woodford* informed him of the Reality of the Appellant, and his Relations; and delivered him a Note under the Hand of *William Cowper*, Esq; purporting the same, That the Infant was the Plaintiff in the Appeal; that one of the Women was his Mother, and that the other Man and Woman were his Uncle and Aunt; which, together with the ready Answers they gave to such Questions as Mr. *Toller* asked them, induced him to believe them to be the real Parties; as in his Examination he sets forth.

Mr. *Toller* says further, That, on the twenty-sixth of the same Month of *April* he desired the Infant, his Mother, Uncle and Aunt, to deliver him back the Writ; but they declared, That the Infant with Advice had burnt the same.

Mr. *Toller* in his Examination gives this Account; That some short Time before his Receipt of the Writ, he received a Letter from Mr. *Will. Cowper*, to know whether any Writ of Appeal was come to his Hands against Mr. *Spencer Cowper*; to which he answered there was none: That some short Time after such Writ was come to his Hands, he received another Letter from Mr. *William Cowper*, to the same Effect as the former; to which Mr. *Toller* answered there was; and sent him the Contents of the said Writ: That after such Writ came to his Hands, Mr. *Spencer Cowper* sent him a Letter, to know whether he had received any Writ against him; to which Mr. *Toller* informed him he had. So that by Mr. *Toller's* own Examination a perfect Correspondence is owned; and an Intelligence from time to time, and from one Party to another, is given.

That upon the last Day of the said Term, Mr. *Toller's* Examination was reported to the Court of *King's-Bench*; who, upon hearing the same, were of Opinion, That he was guilty of an high Misdemeanour, and was in Contempt of that Court; and thereupon was committed to the *Marshall*, and fined Two Hundred Marks.

That Mrs. *Stout* having received no Satisfaction for the Blood of her Daughter, by the Under-Sheriff's being so fined, did petition the now Lord Keeper for a new Writ; the Time being elapsed then for the suing out of another in course: At which Time also there was a cross Petition preferred in the Infant's Name, praying, That no new Writ of Appeal should be sued out in his Name. And the subject Matter of both Petitions being debated before the now Lord Keeper, the Master of the Rolls, the late Lord Chief Justice *Treby*, the Lord Chief Baron *Ward*, and Mr. Justice *Powell*; upon such Debate it not then appearing, by any positive Proof, that the Appellees in the Writ, nor any of them, were privy to the Destruction of the Writ; it was therefore thought hardly reasonable that a new

Writ should be granted; which was a great Cause of Mrs. *Stout's* Petition being rejected.

Now Mrs. *Stout's* Petition was grounded purely upon another Bottom (she not imagining that such an Objection would have been started) for she was advised, that if Justice had been obstructed, whether it had been by Accident or Design, in either Case a suitable Remedy might have been found: As, supposing the Writ of Appeal had been accidentally burnt when in the Sheriff's Custody, as it really was when it was out, in respect to have a Discovery of Truth, the Court, which first gave the Writ (she was advised by Council learned in the Law) could supply the Loss of it.

Had she imagined that all the Appellees would have so much as instanced their total Ignorance, as to the Destruction of the Writ, she could have much better prepared herself to have given them an Answer; she could have set forth how the Infant, his Mother, and the Appellees Attorney, went in a Coach with four Horses to the Under-Sheriff at *Heriford*, and there took the Writ of Appeal from him, and from thence brought it to *London*; she could have informed the Court of a more particular Intelligence, lately confirmed, concerning the Destruction of the Writ, by whose Order, and at whose Chamber, the same was burnt: Which Matters, if yet examined, will sufficiently evince whether the Appellees, or some one of them, were privy or not to the Destruction of the Writ.

There was an Objection against Mrs. *Stout's* Petition, That the Writ of Appeal was never well sued out (the Infant, nor his Mother, not knowing of the same till afterwards) but to that, besides the Proofs Mrs. *Stout* could have given to the contrary, she was and is still advised, That her being duly admitted Guardian, by the free Consent of the Infant (though subsequent in Time to the suing out of the Writ) the same in Law is very authentick, and makes the same well sued out. And it is presumed, that no Person will say, That the Lord Keeper, and the other Judges, did all agree to the contrary, upon Debate of the Matters before them.

It was mightily insisted upon by the Council for the Appellees, at the hearing of both Petitions, as if Mrs. *Stout* should cause herself to be admitted Guardian to the Infant, only to protect her Estate from the Infant, and that without the Privy of the Infant's Mother, or any of his Relations: But (besides the very Admittance itself, which is purely for prosecuting the Appeal, and for nothing else) Mrs. *Stout* was always ready to discover the Title of her Estate; and never but declared, That the Infant had no Right thereto. And as to the Infant's Mother not knowing of Mrs. *Stout's* Designs, it is very easily answered; for it is not only sworn, and the Affidavits filed in the *King's-Bench*, That Mrs. *Stout* wrote to the Infant's Mother what her Designs were; but also a particular Account is in those Affidavits set forth, How willing the Infant's Mother was to send her Son to Mrs. *Stout*, ordering one of his Uncles to carry him to her, for Mrs. *Stout* to do with him as her Occasions required; and withal, directing such Uncle to deliver her Son to Mrs. *Stout*, and to none but her, and to do according to her Directions.

It hath commonly been reported, as if the Prosecution in this Appeal hath been purely vexatious,



tious, begun by a Body of Quakers, and espoused by a Faction at *Hertford* against Mr. Cowper's Interest. But whoever the Fomenters or Spreaders abroad of such Reports are, they would do well to consider, if it were their own Case, to have an only Child murdered, and her Reputation rendered infamous to Posterity, whether Nature and Duty would not oblige them to use all Means to make a Discovery of the Cause thereof? And whether they would not think it hard to have their own Endeavours reflected on, and their utmost Diligence accounted to be the Cause of a Party?

It hath also been reported, and perhaps by some of the Appellees may be objected, That the very Method in the Process of this Appeal hath been malicious, in delaying the suing out of the Writ, until the Time was almost elapsed, thereby to keep the Appellees in an uneasy Suspence. But in Answer to that 'tis confessed, That it was much longer before the Writ of Appeal was sued out than was desired or expected; because it was near half a Year before Mrs. *Stout* could find out (though all that while she made a diligent Search) the proper Person to make an Appellant; and after she had, she was forced to examine most of the Registers in *London* and *Southwark*, to make out his Pedigree; and which as soon as she had done, the very next Day she caused the Writ of Appeal to be sued out: So that it was her Misfortune, and not her Malice; it being under the Necessity of so long a Delay.

It is commonly urged, as a strong Argument against a second Trial of the Appellees, That there is no new Evidence that Mrs. *Stout* hath against them: But such Persons, whoever they are, not only assert what they are totally ignorant of, but also conclude, that Mrs. *Stout* takes a great deal of Pleasure (especially now in her old Age) in being in a constant Fatigue, and considerable Expence, purely to be rendered ridiculous to the World, and uneasy to herself, in the fresh and daily Renewals of her great Loss. In Answer to which, she is sufficiently assured, that she goes and acts by other Principles and Designs; and that she hath more material Evidence than ever yet was made publick; and that she believes the Appellees (though they pretend their Innocency is fenced providentially with such Circumstances as that they need not fear) do not care to come to the Test; or else why should there be so vigorous an Opposition against so plain an Act of Justice, if there was no Matter of Fact that could be proved against them, nor no concurring Circumstances that would any way affect them? (as they seem to insinuate.) It would have redounded much more to their Honour and Reputation, and have wiped off all Occasion of Reproach, if (instead of so mean an undermining of Justice, in the Destruction of the Writ of Appeal) they had undergone a second Trial; it being impossible (according to their own Assertions) for them to miscarry, or be found guilty. All Persons must certainly know, that it would be no Prudence in Mrs. *Stout* to divulge her Evidence before a Trial; and if she doth but act prudently, for any therefore to alledge she hath no Proof, is purely to speak at random and at a venture, and ought to be regarded accordingly. [But this Affair came to nothing.

*The Hertford LETTER: Containing several brief Observations on a late printed Trial, concerning the Murder of Mrs. SARAH STOUT.*

SIR,

I Am favour'd with yours of the 20th ult. whereby I perceive your Pleasure is, That I should give you my Sentiments concerning Mrs. *Sarah Stout*'s Death, the Trial, &c. In Answer, I am very sensible of my own Weakness, and how unfit I am to enter into a Controversy, wherein so many Doctors have been worried already: Nevertheless, in Obedience to your reiterated Commands, (though in doing it I may expose my own Ignorance,) I shall give you my Thoughts concerning the Natural Cause of Drowning, Floating of dead Bodies afterwards, the various Sentiments of the Doctors, the Manner of her Death, the Letters produced in Court, her Melancholiness, why no Mention was made of the Money; and lastly, concerning two publick Experiments, whereof one was made here, and the other in the River of *Thames*.

It is a common Observation of most People, not used to dive, that upon their plunging themselves in the Water, whether it be voluntarily, or involuntarily, they find a great Confusion of their Spirits; so that it is morally impossible for them to regulate their Actions in this Surprize, by the Dictates of Reason; in this Consternation, they lay hold on any thing that comes in their way, not considering whether it may contribute to their Sinking or Swimming.

In this Hurry of the Spirits, (occasion'd partly from the Noise their Fall makes in the Water, and partly from its running into their Ears, Nostrils, &c.) the whole Animal Oeconomy is brought into Disorder. In this Confusion, it is no ways surprizing, that Water, wherein they are immersed, should insinuate itself into some Vacuities, no ways adapted for its Reception: And it being obvious to all, That no Man doth, or can live without Respiration, whatever Element soever he is in; if in the Air, he sucks that in, which naturally flows into the Lungs; if in Water, what comes into the Mouth, as long as his Senses continue, he swallows that down the Gullet; as long as he doth not breathe, there is little danger of Drowning, but on the first Inspiration, if he is at the Surface of the Water, 'tis much if he doth not swallow down the Wind-pipe (with the Air) some small Quantity of Water; but if he is totally immersed in it, 'tis not improbable, that upon Inspiration, a far greater Quantity of Water than Air will enter into the Cavity of the Lungs.

In every Expulsion of Air out of the Lungs, the *Epiglottis* is lifted up; if the Mouth, at the same Time, should be full of Water, 'tis impossible but some of it will pass down the Wind-pipe; as is observable in those that accidentally laugh while they are a drinking, if a Drop falls into the *Aspera arteria*, it will cause a Coughing, which is a convulsive Motion of the Lungs, &c. whereby Nature doth commonly throw up any thing that doth casually fall upon them; by this struggling of Nature, to expel the Water already slip'd down, the *Epiglottis* is lifted up, and instead of ejecting the Water just swallowed, the Mouth being full of it, a great deal more forceth itself down,

down, by its natural Gravity, which gravitates the more, by reason of the Cylinder or Cone of the Air, that continually presseth on its Superficies. As soon as the Senses are gone, the *Epiglottis* is kept open by the Force of the Stream that runs into the Wind-pipe, 'till the *Bronchia*, and all their Ramifications, are filled: As long as the Senses continue, they swallow most of the Water that comes into their Mouths, into their Stomachs; but when they are near suffocated, the Water runs into those Ducts, where it meets with the least Resistance.

So long as Life continues, there is a convulsive Struggling of Nature, to expel out of the Lungs all those Things that are noxious to them, especially Water; being never used to be Receptacles for any thing but Air, they use their utmost Efforts to eject it, by a violent contracting their Lobes nearer together; by these exorbitant Contractions, the Water contain'd in the Ramifications of the *Bronchia*, &c. are sometimes forced into the Cavity of the *Thorax*, either by dilating the Pores of the thin Membrane that invests the Lungs, (as Quick-silver is forced by the Pressure of a Hand through a piece of Leather) or by the Rupture of their Tunicle, or by some minute Vessels, not yet described by Anatomists. If any Practitioner in Physick, &c. shall assert, That Anatomy is brought to a *Ne plus ultra*, and that all Ducts, through which the Juices of Animals are strain'd, are detected; I would desire them to tell me through what Vessels the Pus in an *Empyema*, where the Matter lies on the Midriff, when there is no Ulcer of the Lungs, is expectorated, or through what Passages, when 'tis carried off by Urine, 'tis convey'd into the Kidneys; or how bitter Injections cast into the *Thorax*, can affect the Mouth with its Taste, (as the Observations of Physicians do demonstrate;) or let them read a Treatise of Robert Boyle, Esq; call'd *New Experiments Physico-Mechanical*, touching the Spring of the Air; where, amongst many curious Observations about the Lungs, he asserts, *That the diligent Wallæus relates, That he divers Times observed in the Dissection of Live Bodies, that the Membrane that invests the Lungs, had Pores in it as big as the longer sort of Peas,* P. 343.

Water is as frequently found in the Cavity of the *Abdomen*, as of the *Thorax*; but by what Ducts or Passages (when there is no visible Rupture of the Coats of the Stomach or Guts) it is carried there, I leave it to the Microscopical Anatomist to determine: I conceive it enough for me, at present, to tell you, that it is Fact. I am conscious you are not ignorant that there are many Things that happen in the Animal Oeconomy, that cannot be proved *a Priori*; yet when they are *a Posteriori*, they are admitted by the Schools as undeniable Arguments. If any are so Sceptical as to deny what is not capable to be proved *a Priori*, they would be put to it to prove the Circulation of the Blood, Motion of the Animal Spirits, or where, or how the Chyle is transcolated through the Coats of the Guts.

As soon as the Lungs, Stomach, &c. are full of Water, the Body naturally sinks, and rises no more, 'till there is a Putrifaction in the inward Parts, which in cold Countries is longer than in hotter Regions; but the sooner Putrifaction is begun, the sooner the Corps floats, whereof no

certain Calculation can be made, the Time of their rising differing, with respect to the Region, and in the same Climates with respect to the Seasons of the Year: In these Parts, according to the common Reckoning, they float in Nine or Ten Days.

The common Cause assign'd for floating of Bodies drown'd, is, the breaking of the Gall; which you know is a vulgar Error; so that I need say nothing in Opposition to it: The Cause assign'd by the Moderns, is Putrifaction; but how this Putrifaction renders the Body more boyant than 'twas before, is not obvious to every Eye; therefore I shall give you my Thoughts concerning its *Modus agendi*. Putrifaction is a Species of Fermentation; by Fermentation the Air contain'd in the Cavity of the Breast, Body, Stomach, &c. tho' seemingly full of Water, yet they contain great Quantities of Air, which is rarified with the other Juices, proportionable to the Degrees of Putrifaction; and this insensible Dilatation of the Body encreases gradually, 'till the Corruption hath made a Passage through the Skin; so that a Person that is not above 20 Inches in Circuit when first drown'd, after he hath lain some Weeks in the Water, will be at least 30 or 40 Inches in Circumference: This gradual Dilatation of the Body, I conceive, is the sole Cause of its rising to the Surface of the Water, after some certain Time, and also of its more or less Boyantness afterwards.

Having given you my Thoughts concerning the Cause of Drowning, of the Floating of the Corps afterwards; I shall now acquaint you with my Notions, why Bodies thrown dead into the Water do not sink, and why some are more boyant than others.

It is observable, that human Bodies, after Death, admit no Water, especially suffocated, as the Experiment made some Weeks since, doth evidently demonstrate; because, as soon as Death seizes a Man, the Sphincter Muscles, in all Parts, do naturally contract themselves, for which Reason, it is not so easy to inject any Liquids into the Parts that have them, as before: By this Seclusion of Water, the Vacuities (which in drown'd Creatures are full of Water) are, in those that come by their Death some other Way, full of Air, which, by natural Experiments, is proved to be a thousand times lighter than Water; and by the same sort of Experiments, solid Flesh is observed to be but a little heavier than Water: If you grant this, which is easily demonstrated, it will be no hard Matter for any considerate Man to believe, that Flesh (which hath many large Cavities in it, fill'd with Air) may float. If you doubt the immediate floating of human Bodies, thrown dead into the Water, you may, for your Satisfaction, consult the Opinion of Seamen, who have been the last War in several Engagements with the *French*, or those that have been a *Guinea* Voyage; where, when they throw the dead Negroes over-board, they never lay any Weight to their Feet, to sink them, as they do to white Men: It is certain that all those Negroes do immediately float; I have spoken with several, lately come from thence, that, if Occasion were, would attest it with an Oath.

Bodies are more or less boyant, either in respect to themselves, or in respect to the Medium wherein they float.



If the Person died in the very Act of Inspiration, the Lungs will be full of Air, by which the Breast will be sensibly dilated. That the filling of the *Thorax* with Air, may be a Cause of floating, is evident from those that can lie on their Backs without stirring Hand or Foot; it being observable, that those do fill themselves as full of Air as they can, and that as long as they can hold their Breath they float, but on the very Instant of breathing they sink. If they have a large Chest, or are very lean, they will float the loftier.

If they are cast into Salt Water, they will be more boyant than in fresh; it being experimented, that Ships will sink some Inches lower under Water in the *Thames*, than when they were at Sea; if into deep Water, all Men observing they can swim more easily in deep than in shallow Water.

On the contrary, if the Person died in Expiration, had a small Chest, was fat and fleshy, or was thrown into fresh or shallow Waters, he will swim the more under Water.

I do not perceive so great a Discordancy between the Doctors that were Evidences for the King, and their Opposites, as some seem to insinuate. The Witnesses for the King deposed, That it was their Opinion, that no Person ever was, or possibly could be drown'd, that had no Water in their Lungs, Stomach, &c. and that as far as they had made any Observations on drown'd Persons, they always found great Quantities of Water in the inward Parts of drown'd Persons; Part thereof usually, in lifting them out of the Water, runs out of their Nose or Mouth; that upon their Dissection, they had found considerable Quantities of it in the Cavities of their Bodies; and that it was their Judgment, that the inward Parts of drown'd Persons would putrify in less than six Weeks Time. Whether these are not undeniable Truths, I leave it to the Determination of yourself, and all unbiassed People that have made any real (not notional) Observations on drown'd Bodies.

Their Learned Antagonists, whose sole Endeavour and Business, as far as I could perceive, was to render it a mute Case, by their strenuously urging, *That two or three Ounces of Water was sufficient to drown a Person*; not from any Observations on human Bodies, but from a private Experiment on a Dog or two that was half hang'd, as I am told; and I am apt to think there was some Artifice used, seeing the Experiment did not succeed, when made publickly in the River of *Thames*, by the same Person.

Dr. Sloane saith, *That Cases of this kind are very uncommon*, (viz. for Mrs. Stout to be drown'd without any Water in her) *and none of them have fallen directly under my Knowledge*; nor, as I verily believe, under any other Person's, since the Creation of Man: Then he tells you, that *Water swallowed by the Gullet, into the Stomach, will not drown the Person*; (Who said the contrary?) *But it is that which goes into the Windpipe and Lungs that suffocates*; and confirms it with an Observation, saying, *I have observed some Spoonfuls, if it went the wrong Way, to have choak'd or suffocated the Person*. Note, he doth not say drown'd, neither do I think any Person can properly be said to be drown'd, that hath not swallow'd above two or three Ounces of Water, but rather such are (as the Doctor saith) choak'd or suffocated. In the same Paragraph he tells you, that *Whether a Person comes dead or alive into the Water, he be-*

*lieves some Quantity will go into the Windpipe*: Then Water in the Windpipe is no certain Sign of a drown'd Person; I am of another Opinion, which our Experiment doth seem undeniably to prove.

Being ask'd by the Judge, Whether the Parts would not putrify in less than six Weeks, if there had been Water? his Answer was, *My Lord, I am apt to think it would have putrified the Stomach less than the Lungs*: How direct and satisfactory this Answer was to the Question, you may determine. I observe a general Question, (for what Intention I cannot divine) which was, Whether any Water would go into the *Thorax*? If it did, or did not, I cannot conceive what Benefit or Prejudice it would be to this Case, though I am apt to think the Membrane that invests the Lungs, may easily be torn by violent Coughing, which is observed in all Persons when any thing falls into the Windpipe.

Near the Foot of his Discourse, he saith, *I am apt to think, if there was any Quantity* (of Water) *in the Lungs, the Sponginess of the Part would suck up some part of it*: Who said the contrary? But Doctor, If they had suck'd up any part, would not her Lungs have been moister, than if they had suck'd up none? But Mrs. Stout's were rather drier than usually they are in dead Persons; therefore — *As to the Stomach, I have not known it tried*; Have you known it tried, as to the Lungs? If not, we are as much in the Dark as before, unless we take your *I am apt to think* for Demonstration.

This Doctor closes his Sentiments with *If there was a great Fermentation, a great deal of it* (Water) *would rise up in Vapours or Steams, and go off that way*: Here he terminates all with an *If*. Suppose I should grant him there was a great Fermentation, to be as true, as I am confident 'tis false; his Inference I doubt would not follow, viz. that *a great deal of it would rise up in Vapours or Steams, and go off that way*; if it should rise into Vapours in the Stomach, I am subject to believe, that the Coldness of the Parts through which they must pass, would condense them again, before they could get out of the Body. What Way he means by *That Way*, I cannot imagine; if 'tis through the Gullet, the Contraction of the Mouth of the Stomach, Gullet, (which as Dr. Garth says) contracted or pursed up by a Muscle in the nature of a Sphincter, and the Closure of the Lips, &c. would either keep them in the Stomach, or else the Coldness of the Part thro' which they must of Necessity pass, would condense them in their Passage out of the Body: If through the Guts, the Pylorus, the Coldness of the Guts, or the Sphincter ani, would obstruct their Passage: If it could be imagined that the Subtleness of these Vapours could get thro' the Coats of the Stomach, I conceive the Coldness of the Omentum Peritoneum, and the Thickness of the Muscles, Fat, &c. of the Abdomen, would impede their Exit out of the Body. In fine, it seems very probable to me, that if there had been any Fumes raised in the Stomach, by Fermentation, that they could never get an Exit through so many Impediments.

Dr. Garth tells you, that *It is impossible that the Body* (of Mrs. Stout) *should have floated, unless it had rested, or been intangled amongst the Stakes*. This is a certain Truth, if she had been drown'd; but if she was thrown in dead, there is nothing more common than for it to float; and this

this my Assertion is consentaneous to the universal Experience of those Seamen that use the Negro Trade; for when any of their Slaves die, they throw them over-board, without any Weight to their Feet, and these float immediately.

That she was found sideling in the Water, is a mighty Argument with this Doctor that she did not float; but grant she was intangled (which is denied by several) between the Stakes, as 'tis asserted, I think it no greater Wonder, than for a Deal Board twelve Inches broad (which should accidentally get edgewise between two Stakes, not above nine Inches distant one from the other) to float edgeling, as long as 'tis intangled between them. Nay, on the contrary, I think it morally impossible for any Body, that is much broader than 'tis thick, if it casually gets edgewise between two Stakes, whose Distance will not let it lie flat, but it must continue more or less edgeling, 'till 'tis disintangled.

I observe the Judge ask'd this Gentleman, Whether Water in the Body would putrify it? He answer'd, *I say not; for in some Places they keep Fleish-Meat from corrupting, by preserving it in Water*: If he means Water in a deep Well will keep it a Day or two in hot Countries, I may admit it; but that it will keep it six Weeks, or more, I utterly deny it: if it will not keep Fleish from Putrifaction forty-six Days, it hath little Analogy with the Case under Debate.

This Doctor tells you, *He must differ from him (Mr. Coatsworth) where he infers, she was murdered, because he found no great Quantity of Water in her*. This is a Mistake; for neither he, nor any of the other Doctors, or Surgeons, that were present at her Dissection, inferr'd she was murdered, because she had no great Quantity of Water in her; but because she had none at all in her.

Dr. Morley saith, *That these which seem to be the Questions of the greatest Moment, are, Whether there was a Necessity for this Body (if drown'd) to have a great Quantity of Water in it? And whether Bodies thrown dead into the Water float? To the first I answer positively, That there is no absolute Necessity that she should have a great Quantity of Water in her*. With Submission, Doctor, pray tell which of your Opposites said there was an absolute Necessity for Mrs. Stout to have a great Quantity of Water in her; they said, they could not conceive that she was drown'd, that had not one Drop of Water in her. If you would have contradicted them, you should have demonstrated to the Jury, either by Reason or Experiments, how a Person might be drown'd without any Water in them: If you could have done this, you had answered the Question of greatest Moment.

This Doctor's Difference between Persons drowned by Accident or Design, I would flatter myself, was rather a *Lapsus Linguae*, than his real Judgment; for it is certain, with whatsoever Design a Man may go into the Water, before he is half dead he is deprived of his Senses, and how he governs himself then, you may judge. To the second Question, he saith, *I think, if Bodies new killed float, 'tis by Accident*: It is as accidental for Bodies new kill'd, when thrown into Water, to sink, as 'tis for Persons just drown'd to swim.

Dr. Woolaston being ask'd his Opinion, *If a Person be drown'd, whether it can be discovered six Weeks after?* His Answer was, *I think it impossible to be known*: I am apt to be of his Opinion, that 'tis impossible precisely to determine

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what, and how many Injuries her *Viscera* had received, or what Accidents had happen'd unto them forty-six Days after any Person is drown'd; for naturally they would have been putrified in half that Time; and when the Bowels are reduced into a *putrilaginous Mucilage*, who can give a rational Judgment concerning their former Figure, Position, or how they had been affected? This is what naturally happens to a drown'd Person, but there was nothing of this in Mrs. Stout; which is no small Argument with me, that she was not drown'd. I shall take little Notice how he contradicts his Brothers, by his affirming, *That in drown'd Persons, the Water lies only in the Stomach and Guts*. As to his Experience, I doubt he is not candid; for I believe I have heard the same Story, which was thus: Two Men quarrelling in a Wherry, one of them took up the Stretcher, and knock'd the other down; in his falling, he accidentally caught hold of his Adversary, and they both fell into the Water together; he that was knock'd down was not swell'd, but the other was exceedingly.

Mr. Cowper affirms, *That it is not reasonable (in Mrs. Stout, though drown'd) to expect any thing but Froth*. What, will all the Water turn to Froth, that a dying Person receives before he is drown'd? 'Tis a Paradox to me: How contrary this Surgeon's Sentiments are to the universal Experience of the Learned and Unlearned Part of Mankind, let the unbiass'd judge. If he had consulted *Ambrose Parey*, and had thought him a reasonable Man, doubtless he would have been of another Opinion; who saith, *The Belly of him that was thrown in alive, will be swollen or puffed up by reason of the Water that is contained therein*.

The whole Stress of this Gentleman's Arguments seems to depend on a supposed Difference that there is between Persons that drown themselves, and those that are casually suffocated by Water; whereas I am apt to think there is little more Difference, than between one that puts the Halter about his own Neck, and one that the Hangman forceth it on; there is a Parity of Causes, why the Effects in the same Species should extremely differ, is more than my weak Intellect can comprehend: In both I conceive, that in less than a Minute, their rational Faculty is so egregiously distorted, that nothing is done regularly, or by its Dictates.

The Verity of his private Experiments I doubt, because when he made a publick one, it infinitely contradicted his clandestine ones. There is a vast Difference in drowning a Creature in a Tub, and in a River; in sinking him with a Weight tied to him, and permitting him to sink by his own Gravity. I am not of Opinion, that 'tis ridiculous to expect Water in the Cavity of the *Tborax*, tho' the Lungs had not suffer'd an Impossthuation, or the like, for Reasons formerly assign'd.

Dr. Crell saith, He shall only insist upon what *Ambrose Parey* relates in his Chapter of Renunciations — He tells us, *That the certain Sign of a Man's being drown'd, is an Appearance of Froth about his Nostrils and Mouth; which could not be, as he declares, if the Person had been strangled, or otherwise killed before*. For the Confirmation, or Confutation, of these positive Assertions of this Learned Doctor, I shall give you the verbal Expressions of *Ambrose Parey*: *Whosoever*, saith he, *is found dead in the Waters, you shall know whether*

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they



they were thrown into the Water alive or dead; for all the Belly of him that was thrown in alive will be swell'd and puffed up, by reason of the Water that is contained therein; certain clammy Excrements come out of his Mouth and Nostrils. In the foregoing Paragraph he gives you the Signs, whether one is hanged dead or alive; his formal Expressions are, *If he was hanged alive, there will be a Foam about his Mouth, and a foamy and filthy Matter hanging out of his Nostrils.* Observe this Author, whereon he only insists, faith, There is a Foam and filthy Matter about the Mouth and Nostrils of them that are hang'd alive. Now whether Froth at the Mouth and Nostrils, is a certain Sign of a Man's being drown'd, or whether it is not incident to Persons that die of other Diseases, any Physician can easily determine. If you will be pleas'd to read *Paulus Zacchæus's Quæstiones Medico-Legales*, on the same Subject, you may find that he agrees with *Ambrose Parey*, That an Appearance of Foam about the Nostrils and Mouth, is no certain Sign of Drowning. By such positive Assertions of the Learned, how easily may the Ignorant be imposed on? By this you may evidently see the Difference between a Witness on his Parole, as this Gentleman was, and one upon his Oath, as the King's were.

Mr. Herriot being asked by Mr. Cowper, What Observations he had made concerning this Matter? answer'd, *When I was a Surgeon in the Fleet, I made it always my Observation, when we threw Men over-board, that were killed, some of them swam, and some sunk.* Then being interrogated by the Judge, *When a Body is thrown over-board, doth it sink or swim?* His Answer was, *I always observed that it did sink.* What Incoherence is here! First, *I made it always my Observation, when we threw Men over-board that were killed, some of them swam, and some sunk:* And almost in the same Breath faith, *I always observed, That it (a dead Body thrown over-board) did sink.* I am apt to be of Mr. Herriot's Mind, as to his first Assertion, That Men kill'd in a Fight being thrown over-board, some of them sunk, others swam; those whose Breast and Belly are no ways injured float; but those whose Breast and Belly are perforated, so that Water gets into their Cavities through the Wound, I doubt not but they will sink.

Mr. Bartlett tells you, *He never saw any Body float, though he had been in several Engagements.* It is very probable, he kept himself all that Time in the Cock-pit, and it may be long after dressing the wounded Persons. The fittest Persons in this Case to give their Observation, are Officers and Seamen, who are always upon Deck, and often obliged to look out; and not Surgeons, who are all the Time of Engagements secured in the Hold of the Ship.

Mr. Camlin faith, *There were more and greater Signs of the Stagnation of Blood on the Body of this Child, than on the Body of Mrs. Stout.* But on what Parts these more and greater Signs were, whether on the Breast, Belly, &c. not one Word. The Mother of the Child asserts, there was not the least Sign of any Stagnation of Blood on any part of her Child: She having lately had the Small-Pox, her Face where the Small-Pox had fluxed, was somewhat discoloured; but it was no more discoloured, after her Drowning, than

it used to be (when she was cold) before her Death; the Soil of the Water doth generally alter the Faces of People: So Mrs. Stout was not known by her Neighbours, till that was wiped off. The Settlements of Blood on Mrs. Stout were dispers'dly on her Ear, both sides of her Neck, Breast, Arm; but on what Part of the Child's Body these more and greater Signs of Stagnation were, he doth not specify; because had he assigned any particular Place, there were several preient that would have contradicted him. General Terms are the fittest Covers for Falshood.

If this Gentlewoman was not drown'd, as the Doctors and Surgeons for the Prisoners seem to insinuate, the Query then will be, How she came to her End? With Submission to better Judgments, I shall here offer my private Sentiments concerning it. I am induced to believe, she was knock'd down with a Blow on her left Ear, from the large Settlement of Blood there, which, as Mrs. Kimpson swears, was as much as her Hand could cover, and more: After she was felled to the Ground by the Blow, it is probable, with the Gripe of a strong Hand, she was throttled: From the Stagnation of Blood on both sides of her Neck, under her Ears, which Mr. John Dimsdall, Jun. swears there was, and from the Settlement of Blood on her Breast, I am inclined to believe, That the Person that throttled her, to support his Hand that he might gripe the stronger, rekked his Arm on her Breast, which occasioned the Stagnation there.

The Circumstances that induce me to think she was not accessary to her own Death, are these following: Her being found without her Gown (which probably was torn in the Scuffle) and Nightrail; her Gown could not be found, though the River was diligently raked several times, 'till about a Week before the Trial, it was found hanging on a Stake, which the Miller had cleansed from the Trash that hung on it about half an Hour before, and he will depose that it was not there then: It was torn to Rags, without one of its Sleeves, some Parts of it were as rotten as Dirt, other firm; you might tear it (which was made of a Sort of *Norwich* Stuff) and the Lining (which was a silk Damask) with your Fingers, as I did: Query, Whether Stuff or Silk will naturally rot so soon under Water? Here is no News of her Nightrail yet. 2. From her floating; whereof I make no doubt, because it is sworn by several Witnesses. 3. Because her Belly was not swollen. 4. Because no Water came out of her when lifted out of the River, nor purged out of her afterwards. 5. Because her inward Parts were not putrified; though her outward, that had been injured, were; which I suppose was impossible they should have continued so 46 Days after her Death, had there been any Water in them. 6. From the several distinct Settlements of Blood, which is unusual in drown'd Persons: If it had been occasioned (as some may think) from a Blow, which she received when she threw herself in, I am subject to believe, that the Coldness of the Water, in the Month of March, would have hinder'd its Settlement in the cutaneous Parts of the Body, as it is generally observed to do; for what is more common than to dip a Linnen Rag, or a Piece of brown Paper, in cold Water, and apply it to a bruised Part, to hinder the Blood from settling there? 7. From the

the continual Disturbance that Mrs. Gurrey was under, both in Mind and Body: Nevertheless, she would not discover it till she was almost frightened out of her Senses, by the Voice, as she thought, of Mrs. Stout, which uttered these Words, *Divulge, Conceal nothing.* 8. From what is sworn by the Gurreys against their Lodgers at the Trial, viz. Mr. Marlon was hot, and put by his Wigg; I see his Head was wet — they came in about 11 and 12 o'Clock — she turn'd me off, but a Friend of mine will be even with her by this Time — Her Business was done — He would pass his Word, Mrs. Sarah Stout's Courting-Days were over — The Use-Money is paid to Night — You have Forty or Fifty Pounds for your Share — Ask'd him, Whether the Business was done? And he answer'd, He believed it was; but if it was not done, it would be done to Night — Pull'd a Handful of Money out of his Pocket, and swore, he would spend it all for Joy the Business was done. 9. From the Sentiments of the Grand Jury, who, after a nice Examination, were of an Opinion, that she was murder'd; as were several of the Petty Jury, but by whom they did not know —

As to the Letters produced in Court, my Thoughts are, they are not of a Legitimate, but of a Spurious Production. 1. Because the Style doth no way suit her Character. 2. Because her Mother doth affirm, The Letter shewn her in Court was of a smaller Character than ever she observed her Daughter to write; neither doth her Brother think them to be genuine. 3. Because there was no mention made of these Letters, 'till the common Report of her being with Child (which had been industriously spread abroad by several, but by none more zealously, than by a Nominal Quaker, her Quondam Admirer) was proved to be utterly false, by the Oath of several Doctors and Surgeons that had opened her Body. 4. Because Mr. Marson and Mr. Archer, on the Trial, swore (and several of the Coroner's Inquest were ready to swear) That Mr. Cowper, before the Coroner's Inquest, being on his Oath, deposed, *That Mrs. Stout was a modest Person; that he did not know of any thing that was the Cause of it (viz. her Death) That he did not know any Person she was in Love with, but of one whose Name was Marshall; and Mr. Marshall told him, That he was always repulsed by her.* Whether this Oath is not diametrically opposite to his Pleadings on the Trial, you may determine. 4. Because they did not insist on these Letters, when Mr. Jones said, *Indeed they have produced some Letters without a Name; but if they insist upon any thing against her Reputation, we must call our Witnesses.* If the Witnesses then present in Court (who were some of the most reputable in that Town) had been called, to speak to her Reputation, a great deal of that Dirt, that is now cast upon her, would have been wiped off. I cannot but take Notice here how seemingly unwilling he was to expose the Weakness of this Gentlewoman, or to meddle with her Letters, had he not those innocent Gentlemen to defend; when before her Death he had shewn them to Mr. Marshall, a repulsed Lover, and his Brother, and after the Trial, the Printers, who at the Trial did not take them in Short-hand, were favoured with them to be exposed to the whole World.

What concerns her Melancholy, I am induced to believe, that she was no more than is incident

to all People that are sickly, or much troubled with the Head-ach; from what her Maid swears, *That she was ill sometimes, and I imputed it (Melancholy) to her Illness; and I know no other Cause.* And Mrs. Walker doth assert, That Mr. Cowper told the Coroner's Inquest, That he did not observe her any ways melancholy; that he should not have taken notice of it, had not such an Accident happened; only now he remembers, That she was not so free in Discourse at Dinner as sometimes she used to be; and that the Discourse then was chiefly between him and her Mother. Her Mother and Brother do affirm they never observed her melancholy, and all her intimate Companions do assert the same: It is much that none but this Gentleman's Sister, and two or three others, devoted to a Party, should observe any such thing.

Mr. Firmin, his Wife, and several others that were in her Company, with Mr. Taylor, do affirm, that she did not say her Head-cloaths would serve her Time, or any thing like it, and that they esteemed his Discourse with her pure Banter; that she was in her Night-dress, and presently went home and put on clean Linnen: I am apt to think there are many Relations and Friends, bigotted to a Party, that will not boggle to tell a Lye, to save a Friend, or near Relation from —

The Afternoon before her Death, she was observed to stand to see the Judges make their Entrance, with her Friends, as brisk and airy as any there: About four Hours before her Death, as I am told, she was in Company with a Knight of that County, and several others, who observed her to be as merry and pleasant as any amongst them: At Nine at Night, she earnestly importuned a young Gentlewoman of that Town, to tarry and lie with her that Night, as she had formerly done several Times; which she refused then, for some particular Reasons. When Mrs. Stout perceived she would not tarry all Night, she invited her to Dinner next Day, and told her what she had provided, and that she should be glad of her Company; not intending to go out of Doors the next Day.

I am apt to think, that if she had been such a furious Lover, as is pretended, or had any Intention that Night to destroy herself, that she would not have fallen out with any body about the Payment of Money; much less have refused to sign a Receipt for six Pounds, which her D——st had prepared when he paid her the Interest-Money; what was the true Cause why she refused to sign this Receipt, is a Riddle to most.

If she had had so great a Kindness for some Years for this Joseph, as is insinuated, certainly his Wife would have observed something of it; and then she would not be importuning her every Month, by her Letters, to come to London, that she might enjoy her sweet Company: Neither would she in all Probability (if she had been so desperately in Love with him) have lived here several Months together, without his Company, even when importuned by his Wife; but would, as we may reasonably conjecture, have resided in your City, where she might the oftner, and more privately have enjoy'd his Company: And, as for her going out at the Window, it is morally impossible, the Bars being so close together, that a Child of a Year old cannot get out between them; neither was there any Occasion for it, the Keys being always left in the Doors.

Because



Because there is no mention made on the Trial, of the missing of any of her Money ; several are apt to report that her Relations want none of it, which is a grand Mistake ; for they want, as they compute it, at least a Thousand Pounds of her original Fortune, besides the Improvements she had made thereon, which were considerable ; they made little mention of it there, (that was taken Notice of,) because their Evidences that could speak materially to that Point, were Quakers, whose Affirmation will not be taken in Criminal Cases.

The last Affizes, here was a Man hanged ; after he was dead, was cut down, and buried without a Coffin, the Grave filled up, and the Earth well trod down ; in the Evening he was digg'd up again, being pressed almost flat by the Weight of the Earth, was privately cast into the River, and when it was observed that the Corps would sink, it was exposed to publick View, and an Advertisement of it was printed in the *Post-Man*, the 25th of July last, with a great shew of Exultation, by their saying, *Many hundreds having seen this Experiment with their own Eyes, the Opinions of the Surgeons produced on the Part of the King, is thereby destroyed and exploded, and all Persons convinced of the contrary* : What Influence this Experiment may have on you, I know not ; but when all the Circumstances attending it are duly consider'd, I am of Opinion, it will make more against them, than their Opposites : If they had been certain of Success, what need of so much Art ? Why did they not insert in their Advertisement, how the Body had been managed before 'twas thrown into the Water, how they open'd it afterwards, and how they made a strict Scrutiny after Water, yet could not find a Drop in it ? Not one Word of this. Methinks this partial Relation is calculated on purpose to magnify their own Evidences, and put a Slur on the King's.

I doubt not but the ingenious Contrivers of this Experiment did not only expect it would sink, but that it would have some Water in it also. I am apt to think it reasonable, to expect that the Weight of the Earth would have driven out the Wind contain'd in the Cavity of the Breast through the Windpipe, which is impossible to be done without lifting up of the *Epiglottis*, which continually closes the Mouth of the *Aspera Arteria* ; but in Expiration, this being once forcibly removed out of its natural Situation, 'twas very likely that it would not cover it again so nicely, but that some small Quantity of Water might insinuate itself through the small Passages, which the violent forcing out of the Air had made : If this had succeeded, what a Triumph there would have been, you may easily determine.

Some Weeks since, a Surgeon, that had been an Evidence at the Trial at *Hertford*, going into a Bookseller's Shop, meeting some Acquaintance there, he fell into Discourse about Mrs. *Stout*, and asserted there, what he had affirm'd at the Trial, viz. *That two or three Ounces of Water will drown a Dog* : One of the Company told him he could not conceive that so small a quantity would do the Business : He replied, Sir, I will lay a Guinea, that I will drown a Dog in the River of Thames, and he shall not have above three Ounces of Water in him. The Proffer was no sooner made than accepted, Time appointed, Dog brought, and

with a Weight tied to his hinder Feet, flung into the River ; some Time after, he was taken out, and dissected ; where instead of three Ounces, there was about thirty-three ; whereby he not only lost his Wager, but, in a great measure, his Reputation, as to what he had so confidently asserted to the contrary on the Trial.

Having, in some measure, answer'd your Commands, though by it, I have, I am afraid, a little too much trespassed on your Patience, I shall take little Notice now, what Omissions and Alterations there are in the printed Trial ; how Mr. *Stevens* was taken with a strange sort of a Fit, (just after the Petty Jury went out) which disturbed the whole Court : Or how a Wine-Cooper in *Southwark* (who came down as an Evidence for the Prisoners) fell into a sort of Distraction ; and all the Time of the Trial was mightily discomposed in his Mind, so that he was fain to be tied in Bed, yet would often ask how the Trial went, and whether they were like to be clear'd, and would often tell the People about him, that he had done a very bad Thing, but would not confess what, though often urged to it : But shall conclude, desiring that the Authors of this horrid Murder may be detected and brought to condign Punishment ; but that the Innocent may be clear'd from all Aspersions thrown undeservedly on them, which I doubt not, but that the Great *Yehovah*, in his own Time, will bring to pass : And that it may be so, shall be the daily Prayers of,

Sir, your humble Servant,

*Hertford, the 5th of  
September, 1699.*

P. D.

#### P O S T S C R I P T.

I Doubt not but you have heard, that the Gentlemen that open'd Mrs. *Sarah Stout's* Body, did depose, that she was a Virgin ; for your Information, I will give you a true Copy of their Certificate, which is as followeth.

*Hertford, April 28, 1699.*

*WE whose Names are here under-written, having examined the Body of Mrs. Sarah Stout, deceased, do find the Uterus perfectly free and empty, and of the natural Figure and Magnitude, as usually in Virgins. We found no Water in the Stomach, Intestines, Abdomen, Lungs, or Cavity of the Thorax.*

<i>John Dimsdale, Sen.</i>	<i>William Coatsworth,</i>
<i>Robert Dimsdale,</i>	<i>Samuel Camlin,</i>
<i>John Dimsdale, Jun.</i>	<i>Daniel Phillips.</i>

After this Certificate was delivered to the Relations, they desired the Gentlemen that had sign'd it, to give their Opinions, whether they thought she was drown'd or no ; all of them were unanimous that she was not drowned, except Mr. *Camlin*, who was unwilling to give his Opinion, either *pro* or *con* ; but when ask'd, would only say, *There were very odd Circumstances* : Yet, at last, when he was ask'd, Whether he did conceive any Person could be drown'd, that had no Water in their Stomach, Intestines, Abdomen, Lungs, or Cavity of the Thorax ? He replied, *No* ; which the others thought virtually to include as much as they had said.

A R E P L Y

*A REPLY to the Hertford Letter: Wherein the Case of Mrs. STOUT's Death is more particularly considered; and Mr. Cowper vindicated from the slanderous Accusation of being accessory to the same.*

S I R,

I Received your Letter from my Bookseller, on the 20th of September last: And though I am far from thinking your Sentiments upon this Matter, were either desired or commanded; yet am I well enough pleased with your Apology, wherein you tell us, you are very sensible of your own Weakness, and how unfit you are to enter into a Controversy, &c.

This, I must confess, may be of some Use to the Ignorant; by forestalling their Expectation of any wonderful Discovery; but for the Learned, the Compliment might have been spared; since the Performance does so evidently discover what you acknowledge.

The Introduction does indeed promise us great Matters; viz.

*I shall give you my Thoughts concerning the natural Cause of Drowning; Floating of dead Bodies afterwards; the various Sentiments of the Doctors; the Manner of her Death; the Letters produced in Court; her Melancholiness; why no Mention was made of the Money; and lastly, concerning Two publick Experiments, &c.*

But pray, Sir, if we find your Thoughts arise from the Ebullition of a heated Fancy, and that your too eager Zeal for your Friend, has carry'd you oftentimes to over-hasty Conclusions; if, instead of a well grounded and rational Solution of these Phænomena, we are only entertained with incoherent Expressions, false Grammar, Tautology, groundless Surmises, and want of Proof; in a word, if these pregnant Thoughts of yours are found to be meer Trifles, had it not been better yourself alone had been still Master of them? Or, if there was a Necessity for their breaking out, had you not better have communicated them only to your Friend in London, than to have exposed yourself thus ridiculously to the Learned World?

That I may make good what I have alledged, I shall now proceed to your Letter.

*Hertford Letter, ante Pag. 490. It is a common Observation of most People, not used to dive, &c.*

Give me Leave, Sir, here, only to question the Truth of your Proposition; Whether or no, the greater Number of those who are not Divers, have made any Observations upon Drowning, or from their own Experience can satisfy us of the Consternation that ensues plunging themselves into the Water? But admit the Confusion (as without Dispute it is) to be very great; it may not hence follow, that the very first Moment of Submersion, Reason must be lost; or, in your own Words, that there is a moral Impossibility to regulate their Actions by the Dictates of Reason.

As to the laying hold of any thing in their Way, 'tis what equally happens in the Fall from a House, and seems not so much to argue a total Eclipse of the rational Faculty, as a want of Time to deliberate: For the Action of Falling being instantaneous, 'tis impossible to form a settled Act of Judgment.

We all know the Prospect of sudden Death, by what way soever, impresses a certain Horror, (which I must yet think is not so great to one

who wilfully destroys himself, as to him who either by Accident or Constraint is put upon it) but that it leaves us immediately destitute of Choice, or a Power to refuse, both which are Acts of Free Will, and import Reason; I can't allow; as conceiving, if it were so, he that wilfully throws himself from a House, and he that falls accidentally, would both equally lay hold of any thing that might save their Fall.

Pag. *ibid.* In this Confusion (you say) it is no ways surprising, that Water, wherein they are immersed, should insinuate itself into some Vacuities no ways adapted for its Reception.

On the contrary, I must alledge, That whether in or out of this Confusion, it is not only very surprising, but absolutely impossible, that Water should insinuate (though never so cunning) or enter into any Cavity, which is at the same time no ways fitted or (if you had rather) adapted to its Entrance.

I will not stand to comment on your Notion of Suction; I thought such kind of Notion had been long since exploded: For my own part, instead of believing that the Lungs do suck in the Air, I think it more rational to conceive, that as by Pulsion they are emptied, so by the Weight of the Air from the Pressure of the Atmosphere they are presently filled again. Be this, however, as it will, I cannot grant you that every Man under Water swallows down the same into the Gullet whilst his Senses continue: For I doubt not but that he who designedly drowns himself, may choose to let it into the Windpipe; that he may thereby the sooner be choaked.

The swallowing of Air or Water down the Windpipe, is a Term I do not readily apprehend; I take Deglutition, or Swallowing, which is the sole Office of the Gullet, and Respiration, or Breathing, which only appertains to the Windpipe, to be two different Actions, and diversly effected. Whoever swallows any thing, either in or out of the Water, must, by opening the *Sphincter* of the Gula, let it into the Stomach: And whilst a Person under Water continues swallowing, there may be no great Danger attending him of being drowned; it being very probable that during this Action no Water gets into the Lungs; but being unable to hold out for want of Breath, he must necessarily make an Attempt to respire; when ceasing to swallow, the *Epiglottis* riseth, and the Water spontaneously (if you will allow me the Expression) rusheth on the Lungs: So that when a Person is totally submersed, provided he swallows not at all, or cannot swallow longer, 'tis not only not improbable, but I believe certain, that in his Attempt to respire, a far greater Quantity of Water than Air (perhaps nothing but Water) will get into the Lungs.

In every Expulsion of Air out of the Lungs, the *Epiglottis* (you say) is lifted up. And is it not so, I would be informed, in every Impulsion of the Air into them?

'Tis my Opinion, that this Part does never exactly close upon the *Larynx*, but upon Deglutition: And although by your Account it may be thought to be raised up like a Trap-Door, and presently shut down again; I do find it a sort of springy Body, and is, I doubt not, at all times somewhat elevated from the *Glottis*; unless, as I said before, at the time of swallowing; when by the Weight of the Aliments, whether



liquid or solid, some peculiar Muscles assisting, it is forced down: And after this Action is over, by its own proper Elasticity, it raiseth itself again, that the successive Motions of Inspiration and Expiration may be orderly carried on.

When once there is any considerable Quantity of Water got into the Windpipe, I imagine this mighty Struggle of Nature doth not long continue; and therefore cannot choose but wonder to hear you say, *By this Struggle of Nature the Epiglot is lifted up, &c.*

It seems, in my Opinion, very natural; the Cover to the Windpipe being a springy Body, and for the most part inclining to an horizontal Position: This, I say, considered, if the Mouth be full, and the Person almost spent, or though he can, yet if he will not swallow, the Nature of all Fluids is such, that they will run into any Declivity; unless (as upon another Account you have it) they are shut out, or that the Vacuity is no ways adapted to let them in.

Page. 491. *As soon as the Senses are gone (you say) the Epiglottis is kept open by the Force of the Stream.* To which I reply, That the natural Posture of the Epiglot being such as I have described it, we might rather think the Force of the Stream should clap it down, than keep it open; unless by the Force of the Stream, you mean somewhat like that of an Injection through a large Syphon, whereby the said Trap-Door may be beat within the *Rimula* of the *Larynx*; but in stagnant Waters the Force of the Stream will be inconsiderable.

*As long as the Senses continue, they* (I suppose you mean Persons under Water) *swallow most of the Water which comes into their Mouths, into their Stomachs.* And the rest, you tell us elsewhere, they swallow into their Windpipes. But this I deny; for as long as the Senses continue, and they can hold their Breath, they very often swallow none: And after this, in the Case of voluntary Drowning (which you may smile at as long as you please) 'tis more likely by far, that they admit it into their Lungs; since by swallowing never so much, they do not destroy themselves; but by letting a small Quantity into the Lungs, they presently put a Period to their miserable Lives.

*But when they are near suffocated (you say) the Water runs into those Ducts, where it meets with the least Resistance.*

I would, methinks, be informed what you mean by those Ducts. The Nose and Ears, I presume, are full before they are near suffocated: And if the *Sphincter Gulæ* does oppose its Entrance into the Ventricle, what other Duct remains, unless that of the Windpipe? out of which too, after Suffocation, 'tis not impossible but it may be kept, by the Contiguity of the Tongue's Basis to the Palate.

*So long as Life continues (you tell us, p. ibid.) there is a convulsive Struggling of Nature, to expel out of the Lungs all those Things that are noxious to them, especially Water, &c.*

Let me tell you, Sir, I am apt to think this especially will be found a great Mistake; for I doubt not but any thing of a more uneven Texture, slipping into the Lungs, will excite much stronger Convulsions than those from Water: But indeed, according to some Experiments lately made, I could not perceive the Marks of those violent Convulsions you here speak of.

I took a Dog, and by a Weight directly sunk him under three Foot of Water, which was so clear that I could perceive what happened to him: And to be plain with you, I observed that for almost a Minute he threw his Head disorderly about before he gaped; upon which the Water getting into his Windpipe, in half a Minute more he fell down with his Neck to the Bottom, void of Sense and Motion.

After this I plunged another somewhat less; when, in like manner as the former, I found when he had turned his Neck two or three times about, he was to Appearance dead in a Minute's Time.

Now in all this there were none of those violent Efforts, to throw the Water out of the Lungs, discernible; or did I think it at all rational to expect the same forced into the Cavities of the *Thorax*, either by dilating the Pores of the thin Membrane that invests the Lungs, as Quicksilver is forced by the Pressure of a Hand through a Piece of Leather; or by a Rupture of their Tunicle, or by some minute Vessels not yet described by Anatomists: And the Reason of my thinking so is this, Because I could perceive little more to effect it, but the specifick Gravity of the Water; which, according to the Laws of the Libration of Liquors, I take to be inconsiderable.

I know of no Physician that boasts of a *Ne plus ultra* in Anatomy; nor should I expect any such Pretension from a Physician, so soon as from the Anatomist: These two, you know, are not always inseparable Companions. But as to your Instance about the *Empyema*, though I think it foolish to deny Facts, when I am unable to account for the Manner how they are brought about; yet I see nothing to hinder me from believing, that very often, where the Matter you speak of is cast forth by Excretion, the Lungs have suffered a Solution in their Continuity. In two Persons I have inspected, who died under these Circumstances, it was apparent; in both of which, as I suppose from a preceding *Peripneumony*, there had been Abscesses formed in the Lobes of the Lungs, which had rotted their outward Membrane; so that whether the purulent Matter, which was coughed up, came from the said Abscess, or whether some of that which fluctuated on the Diaphragm, might not also be imbibed by the ulcerated Lung, was very uncertain.

The Injection of bitter Liquors affecting the Throat, if they are cast into a *Fistula* which took its Rise from an internal Apostem; or otherwise, if the Penetration has been of long Continuance, and discharged great Quantities of foetid, ichorous, or corrosive Matter; I should less wonder the Experiment should answer: For in these Cases the Tone of the *Viscera* is very much weakened, the Patient very frequently dies tabid, and we find upon Dissection, that very commonly the Lungs are corrupted. It may happen also in a recent Puncture; but then we may be likewise sometimes uncertain, whether the Membrane of the Lungs received no Damage.

I desire not that greater Strefs should be laid upon these Cases than they will readily bear: But this I must aver, That in Penetrations of the Chest it does not always happen; for in a Puncture I have seen injected, and a *Fistula* of this Part, into which I have cast at times several Ounces of a bitter Decoction, with a Tincture of

of Myrrh and Aloes; during which, I can safely say, I never heard any such Complaint, though I have purposely enquired.

Your Citation of Mr. Boyle's Citation from Wallous, if Matter of Fact, might be preternatural: And as to his finding the same divers times, how diligent soever he might be, rather than shew myself uncivil to him, by saying 'tis false, I shall turn Sceptick, and suspend my Assent till I am better satisfied: At present I cannot see, if there was an Admission of Air, thro' Pores much smaller than those made by the longer sort of Peas, into the Cavity of the Chest, how Respiration could be carried on: And I must needs think, that Dr. Garth's Remark upon the Trial is very pertinent; where he tells us, *There is a great Providence in such a Texture; for if (saith he) there were any large Pores in this Membrane, the Air would pass through into the Cavity of the Thorax, and prevent the Dilatation of the Lungs; and consequently there would be an End of Breathing.*

But that I might put this Matter yet farther out of Controversy, being willing to be made sensible of the utmost Efforts of a drowning Creature, and the Result of the most violent Strugglings it could make to save itself; I sent for a Dog, and lest you should find Fault had I made use of a Tub, I procured the Use of a Distiller's Back, which, if I may call it so, is a sort of Trough, containing in Dimension thirty Foot of Length, and half as much of Breadth: Into this, when filled with Water, I caused the Animal to be cast, having before ordered his Fore-Feet to be tied together.

By the Force of the Fall he was plunged over Head and Ears, but rising up again, made to the Side as well as he could; and though several times repulsed, continued struggling, and by the Liberty of his Hind-Feet often raised his Head above the Water: Upon which, seeing no Likelihood of his being drown'd under a very long Time, I order'd him to be taken out, and his Hind-Feet also to be fasten'd together. Thus he was a second Time thrown in, and continued struggling, sometimes under and sometimes above Water, with his Head and Neck; in a Quarter of an Hour's Time his Navel started, and soon after there was a visible Prolaps of the *Intestinum Rectum*: Having thus between while had the Liberty of an imperfect Respiration, it was half an Hour before he had done struggling; after which, under Water he gaped several Times. When dead, I left him, and returned five Hours after; at which Time I desired he might be taken out with his Head erected, that we might lose no Water.

I think, if it had been possible, I had Reason in this Case to expect Water in the two Cavities, *i. e.* the *Thorax* and the *Abdomen*, which seemed much tumified; but was so far from it, that upon the opening the *Peritonæum*, instead of an Inundation, I found not a Drop of Water; and even the small *Intestines* had received very little, if any at all from the *Pylorus*. What was contained in the Stomach was much short of half a Pint, or little more than four or five Ounces. Having raised the *Sternum*, we perceived the *Thorax*, in like manner as the *Abdomen*, perfectly clear of Water. Out of the Windpipe there issued a spumous Matter, and the whole of what

we pressed from its *Ramifications* was about three Ounces.

Thus, Sir, have I given you a faithful History of the Fact; but if you think the Experiment was made clandestinely, or that the Dog was half-strangled before thrown into the Water, as you pitifully insinuate about Mr. Cowper's Experiments, for your farther Satisfaction, you may be informed of Mr. Harrison without *Bishopgate*, of *Thomas Serjeant*, Esq; Gentleman Porter to the *Tower of London*, Mr. *John Lichfield*, Surgeon; with sundry other Persons, as honest and judicious. But to proceed.

*Ante Page 491. Water is as frequently found in the Cavity of the Abdomen as the Thorax.*

It may be so; but if the Stomach, Guts, &c. in the former, and the Lungs in the latter, continue firm and sound, (as is reported they were in Mrs. Stout) I cannot see how it should happen to be found in either. I must confess, I have never seen it, nor was there any thing like it in my late Experiment. If the *Viscera* are putrid, I should not wonder at it; but if otherwise, I should be thankful to your microscoptick Anatomist to shew me how or which way it should enter.

*As soon as the Lungs, Stomach, &c. are full of Water, the Body naturally sinks.* Pag. *ibid.*

I suppose the &c. includes the *Thorax* and *Abdomen*, as well as the Guts; but though the Lungs, Stomach, and the &c. are full of Water, in the Sense of Fulness here meant, I deny that the Body will always sink, as having seen the contrary, and can bring Proof of the same.

Page *ibid.* *It is observable (you say) that human Bodies after Death admit no Water; because as soon as Death seizes a Man, the Sphincter Muscles in all Parts do naturally contract themselves.*

How it is in human Bodies I can't say, having made no Experiment of that kind; but that it is always so in other Animals, I deny; and indeed can see no Reason why it should not be admitted for a parallel Case: For tho' you say, the Sphincter Muscles do contract themselves, yet the Epiglot stands open; so that unless the Tongue and Palate, by their Contiguity, or some spumous Matter already in the Windpipe, intercept its Passage; what hinders, in a supine Position of the Body, but that some small Quantity of Water may slip within the *Rimule*? But whether or no the Sphincters do always naturally contract themselves before Death, may be disputed; for they sometimes labour at that time with such a *Paralysis*, as occasions a Resolution of their nervous Fibres, and forces them involuntarily to let go their Contents: Thus nothing is more common than for dying Animals, whether rational or irrational (if soon before they did not exonerate) to let fall their Urine and intestinal *Fæces*.

That I might inform myself whether the Water would get into a dead Body, I caused a Dog to be suffocated over the Fumes of a spirituous Liquor, prepared for Distillation, in the Time of its Fermentation; and though his Nose was held some little Distance from the Surface, yet it stifled him to Death in two or three Minutes Time; after this he was thrown into the Water, and sunk presently to the Bottom, where he lay several Hours. Being carefully taken out, I opened his Throat, and found the Epiglot (as



is always usual) raised from the Windpipe, which inclining downwards, there was discharged about three Spoonfuls of fair Water.

Page 491. The immediate floating of human Bodies, thrown dead into the Water, I believe to be very uncertain; and whoever goes about to establish it for an infallible Hypothesis, I must needs think very rash, if not guilty of a downright Folly: For, though your Seamen should tell me a thousand idle Stories, I know there are so many Causes that may alter the Case; that it would be very ridiculous to credit so bold an Assertion. I cannot say, I have as yet tried the Experiment on a human Body, but of those other Animals (both alive and dead when thrown into the Water) which I have made use of, there was but one which floated, and that I thought most likely to be found at the Bottom, as having received most Water into the Lungs and Stomach. If the dead Body of an artificial Person should not sink, it might seem strange: On the other hand, if that of a purely tympanical should not float, it would be equally a Wonder.

Page 492. *If the Person died in the very Act of Inspiration, the Lungs (you say) will be full of Air, &c.*

Here, Sir, you must give me Leave to think you very much out of the way; for unless in the Case of some very sudden and violent Death, I am apt to believe all Persons finish their Lives in the Act of Expiration; and even in the most sudden, setting aside that of strangling by a Ligature, where the Air is forcibly included, and its Passage from the Windpipe intercepted, I make it a Question whether the last Motion of the Lungs is not that of its Systole or Contraction: For although to outward Appearance a Man or other Creature may be thought to die inspiring, and seem perfectly devoid of Sense and Motion; yet by laying any polished or diaphanous Body to the Mouth and Nostrils, there is oftentimes a Damp contracted on the same; which is nothing but the Air insensibly proceeding out of the Lungs, and condensed on the Surface of the said Body.

'Tis this general Opinion that hath given Rise to that very common Expression, when we would signify the Death of a Friend, by saying, *He is expired, or hath breathed out his last*. But admit the Assertion good, of dying in the Act of Inspiration, it will not so low that any dying Person can take a tenth Part of the Air he did in perfect Health; and so consequently cannot fill his Lungs with Air: For, not to instance in asthmatick Persons, who at all times take but little Air, by reason of the Obstructions of the *Bronchia*; and are therefore forced upon quick Breathing; it is very rational to believe, that immediately before Death the constrictive Fibres are much weakened, the Blood begins to stagnize in all Parts, and being carried by the *Arteria venosa* into the Lungs faster than thrown off by the *Vena arteriosa* into the left Ventricle of the Heart, a great Part of the pulmonary Cells are so stuffed that they can admit but little Air: So that the Quantity of what we take in perfect Health, and that which we receive dying, is vastly disproportionate.

By filling the *Thorax* with the same Air forced into the Windpipe, unless you mean filling the Lungs in the *Thorax*, it seems of kin to the Jargon of filling the *Thorax* with Water out of the

Lungs. For my part, I have several times, thro' a Tube, blowed with as great Force as I could into the Lobes of the Lungs, and caused at the same time a lighted Candle to be held nigh their Extremities, and round about them; I never could perceive the least Motion of the Flame, whereby I might conjecture the Air had any Vent: So that I must think it impossible that either Air or Water, whilst their Texture continues firm, can insinuate itself into the Cavity of the *Thorax*; till you can bring me some of the diligent *Wallius's* Gentlemen, that have Pores in the investing Membrane of their Lungs as big as the longer sort of Peas:

Page *ib.* I think it very likely, that a dead Body will be more boyant in salt than in fresh Water: But your Experiment I take to be inconclusive; for unless you had said that a Ship will sink some Inches lower in a Sea of fresh Water than in one of salt, your Adversary may object, that the Reason of the lower sinking in the *Thames* may perhaps be as much owing to the want of Depth, as Salt.

The Discordance of the Physicians is best perceived by reading over the Trial: Some Part of the Disagreement, as I remember, did consist in this; That whereas on the King's Part, it was affirmed, the Lungs of Mrs. *Stout* were firm and sound, and not the least Appearance of Water in the *Thorax*; for the Prisoner, Mr. *Cowper*, it was replied, That if the investing Membrane of the Lungs was found, it was ridiculous to expect Water in the Chest their Enclosure.

Again; For the King, It was thought impossible that any Person thrown alive into the Water should be drowned without swallowing or taking in a great Quantity of the same into the Stomach and other Cavities; whereas, for the Prisoner, it was thought very possible two or three Ounces might be sufficient to drown any submersed Person. And this leads me to a Passage in the last cited Page; where I find you much concerned, that Mr. *Cowper's* Physicians should strenuously urge, that so small a Quantity of Water was sufficient for this Purpose: Which you say they grounded on a private Experiment on a Dog half-hanged, you being apt to think that there was Artifice in the Case; and indeed so should I, if I were sure they had half-hanged him: But if you were told so in your Sleep, it may happen to be false; or if not, I think you are but little obliged to any Person, who was so officious as to tell you an Untruth. However, that you may not be told of any Artifice made use of in my Experiments, I shall refer you to the aforesaid Mr. *Serjeant*: He is a Gentleman very curious in these Enquiries, a Man of unquestionable Probity, and very well known in our City of *London*.

In his Presence, with divers others, I caused a Dog who had been kept fasting almost twenty-four Hours, to be plunged under Water, without suffering him to rise: When he had been dead some time, I took him with his Head erected, that we might not lose a Drop of Water he had taken in. Having made a Ligature on the *Gula*, I turned down the *Larynx*, and with a moderate Pressure there was discharged of Water, mixed with a Spume or Froth, about four large Spoonfuls.

After this I came to the Stomach, which I perceived to be very lank and flaccid; when cutting into it, there was not a Drop of Water to be

be found, nor indeed the least Remains of the chylous Juice, which had been before carried off through his long Fasting; so that the Wrinkles of the inward Membrane were very conspicuous.

Soon after I drowned another before the same Company, and do assure you have all imaginable Reason to persuade myself, that all the Water he had received was let into the Lungs, which did not exceed two Ounces and an half: But in this latter (having, unknown to us, been fed a little before) the Stomach was half full of indigested Aliments; yet no Appearance of Water, which in drowning we could suppose he had gulped down.

I come now to your Pleasantry with Dr. *Sloane*, who it seems was so unhappy as to tell the Judge, that Cases of that kind were very uncommon; and lest some ignorant Person should be to seek for the Meaning of the Words, here is a Parenthesis clapped in, to tell us, that by *Cases of this kind* is meant (*for Mrs. Stout to be drowned without any Water in her.*) Vide P. 492.

I thank you, Sir, for your Information; till now I did not think the Doctor's Words were so mysterious, but harmlessly gave them a quite different Construction, which, before you were pleased to be so witty with them, I thought very natural; and having since asked others, they tell me the Doctor means, the Cases of drowned Bodies remarked upon, especially when they have been laid six Weeks under Ground, and afterwards inspected to find Water. Now, Sir, if, since the Creation of Man or Woman either, you have heard of such a Case before, or if, in the Multiplicity of your Practice, you have met with any thing like it, I think 'tis great Injustice that you have so long concealed it.

I would gladly know precisely what you mean by Drowning. You think that no Person can properly be said to be drowned, who hath not swallowed (I should rather like *retroved*, or *let in*; because Swallowing, as I have already told you, is proper to the Gullet) above two or three Ounces of Water: And I think, that if under Water those two or three Ounces do effect his Destruction, he is as truly said to be drowned, as if he had taken in two or three Gallons.

If Respiration could by any Contrivance be secured to a Person under Water, he would be then in no Danger of drowning. Again; Set him up to the Chin, and, if it were possible, let him swallow a Tun; though it may be otherwise mischievous, it will not drown him: For if, as may be inferred from your Opinion, Drowning must be measured by a great Quantity of Liquor swallowed into the Stomach, we have abundance of those drowned Persons, some of them top-full, daily reeling about our Streets in London, and I believe you have some few of them in your Town of *Hatfield*: Hitherto we have called them drunken Persons; and you will find it a very difficult Matter to persuade them that they are properly or truly drowned.

Since then it is not the greater Quantity swallowed into the Stomach, but the lesser taken into the Lungs, that kills the Creature; and since there is no such thing at all as Drowning, but by that smaller Quantity entering the said Part; I reckon that if a Man dies under Water, without the Distinction of more or less Water taken in, he is as much and as really drowned as any thing can be. I know the Word is somewhat ambig-

uous, and Custom has applied it differently; for if a Person upon Land, by Liquor accidentally rushing on the Lungs, or, as it is called, going the wrong way, receives his Death; this, I say, is named Suffocation: but if the same thing betides him under Water, we usually call it Drowning; though the latter is as much suffocated as the former. But I have already been too long on this Matter, and shall therefore proceed.

*Page ib.* I hope by this time you are no great Stranger to the Meaning of that general Question you take Notice of, about Water in the *Thorax*; if being sensible of the Blunder, they had ingenuously quitted it, I believe it had been much better; but whether or no their persisting in it has been any Advantage to them, the learned World must judge.

I cannot think the investing Membrane of the Lungs so easily torn in Coughing; if it should, there may an Ulcer of the Lungs ensue; for the Solution would not presently, if at all, be reunited. But what of this? or what would you infer? I cannot persuade myself there is any Coughing under Water, that should break their Continuity.

I find the Doctor is not yet got out of your Clutches: He brings us, poor Gentleman, so many *If's* and *And's*, that his Sentences happen to prove unintelligible; for where he tells us, that if there was a great Fermentation, a great deal of the Water would rise up in Vapours and Steams, and go off that way; we are at a loss, it seemeth, what way he means.

*Page ibid.* I can't imagine (say you) by that way, what way he means.

I know not what you may imagine; yet I cannot think you altogether so dull as you pretend: But others do imagine, that by the way of Steams and Vapours, he means the way of Steams and Vapours; or, if 'twill be more easy to your Imagination, under the Form, after the Manner, or by the Way of Evaporation. Through what Passages these Vapours were to make their Way, was another Question; which if you were to ask him, he would perhaps tell you, through the Pores of the Body. But it seems, to serve a Turn, all Outlets must be barred and bolted; the Sphincters must be locked up, and all the Coverings of the Body grow so dense and compact, that not one poor Corpuscle shall gain its Liberty: So that although some Steams cannot extricate themselves from putrid Flesh, yet others will get through Plaistered and Brick Walls; nay the very Stones themselves are not a Fence against their Penetration. But if a certain Person, present at the Dissection, does not retract, I was told there was a Moisture somewhat like these Steams on the Burial-Clothes of Mrs. *Stout*; in others I have been informed it has been frequently observed: But rather than this putrefactive Moisture, or sort of Dew, which has been seen upon the Shrowds of the Dead, should be thought to arise from the Body; I suppose you would choose to account for it, from the subterraneous Damps, working through the Coffin, and so settling on the Corps.

*Page 493.* I make no Doubt, but that dead Flesh, whether in or out of Water, will quickly grow putrid: but which of them will be so soonest, I can't be positive; though I am rather inclining to Dr. *Garth's* Opinion, and to think that Water will rather retard than hasten Putrefaction:



In a little time I shall be better able to give Satisfaction to them who require it.

Page 493. You must excuse me, if I don't come up to your Belief, that there was a *Lapsus Linguae* in the Doctor's Distinction of Accident and Design; as believing it founded both on Reason and Experience: But if you will allow them as much Difference as may be found in your witty Simile, Page *ibid.* between the Person who putteth the Halter about his own Neck, and one (as you express it) that the Hangman forceth it on; I know not whether they will desire any more.

Page *ibid.* The Animals I drowned had all of them much Froth come from their Mouth and Nostrils; and after having taken out of one of them the Lungs and Windpipe, and laid them on the Table, I observed this spumous Matter plentifully to rise up, and to run over the *Epiglottis*; insomuch that it seemed likely the *Lubes* might be quickly emptied of their Water by this way of Purgation. I cannot say this Froth is peculiar to drowned Persons; for though perhaps the Lungs may not furnish the Matter, yet to Persons dying otherwise, there very often happens so quick a Ferment in the Stomach, that the Contents thereof are frequently discharged by the Gullet, under this Appearance. I know 'tis positively asserted by one of the Physicians, that if Mrs. Stout had not been drowned, there had been none of this Purgation: I suppose he means from the Windpipe; and then I am inclined to the same Opinion.

Mr. Herriot must be answerable for his own Contradiction; I am so far from defending him, that if he or any one else should tell me it was so general a Rule as did admit of no Exception, I should give little heed to them, since I find it very uncertain.

Page 494. Having now, as you suppose, cleared the Way, and knocked down all before you; the next thing is your Account of her Death: But if I am not much deceived, the Entrance to it is, either through your Unfitness for the Task, or the Weakness of your Intellect, ushered in with a very great Mistake.

*If this Gentlewoman (say you) was not drowned, as the Doctors and Surgeons for the Prisoners seem to insinuate. —*

How! Did the Doctors for the Prisoners insinuate that she was not drowned? I profess I thought they had all taken it for granted that she was drowned. Dr. Crell, I think, in particular, was a Physician for the Prisoners; and he expressly tells the Judge, that he is not to descant upon the Matter of Fact, whether she drowned herself; yet saith he, My firm Opinion is, That she was drowned.

Now if to be positive or firmly to believe she was drowned, be the same thing as insinuating she was not drowned; I see, not how any Man can rightly apprehend another's Meaning, but by the Rule of Contraries. I confess you have already told us of the Weakness of your Intellect; but how weak soever that may be, I must needs think your Memory is very treacherous. Now as to the Manner of Mrs. Stout's Death.

First then we are to understand, *She was knocked down with a Blow upon her left Ear: Secondly, After she was down, she was throttled with the Gripe of a strong Hand: And, thirdly, That the Person who throttled her might gripe the stronger, he rested his Arm upon her Breast.*

On my Word, Sir, you have made it out extremely well; I find it is a rare thing to have a quick Invention: And I must tell you, for your Encouragement, 'tis a question whether the best Mathematician in our City of London could have done it more exactly. 'Twas well your fruitful Genius was consulted to untie this Knot, otherwise we might have met with much Difficulty, and perhaps had never been able to have solved so many perplexing *Phænomena* with so much Perspicuity.

I must confess, 'twas very unlucky for Mr. Cowper, these Settlings happened so pat for your learned Comments: But had they been elsewhere, I fear they would not have escaped your penetrating Judgment. Thus upon the Belly they might have been made by kneeling to keep her down; upon her Back, by falling on the said Part against the Ground: Her Thighs might happen to be trampled on in the Scuffle; and nothing more likely, than that somebody should lie upon her Legs, for fear she should rise again before they had dispatched her. Thus, right or wrong, rather than it should be thought she was accessory to her own Death, we must find out the best Means we can, on which to ground a Persuasion than it happened otherwise, that than of Necessity there must be Violence in the Case.

We come now to the Reasons, why you can't believe she did destroy herself: Which I shall briefly speak to, as they lie in Order; and, with you, submit myself to better Judgments.

The first is, Page 494. *Because she was found without her Gown and Nightrail; which (that we may have a Salve for every Sore) were very probably torn in the Scuffle.*

As to this, I must think it rational to suppose, that she herself might take them off, to promote (as she might imagine) the speedy sinking, or prevent the Discovery of her Body, by their spreading on the Surface of the Water; nor do I see any great Difficulty in the Thought, that a *Norwich* Stuff may be rotted under Water in as little Time as the Gown was of which we are speaking. If the Nightrail be never found, I hope it does not follow that she was murdered: I should rather think, if the Gown was brought and thrown in afterwards, so might the Nightrail too; which would have been as easily rotted elsewhere as the Gown, and with the same Trouble both might have been cast into the Water. I can't suppose, admitting it had been in the River from the Time of her Drowning, that it would have been always in one Place; but rather carried by the Stream under Water, sometimes to one Place, sometimes to another; sometimes lodged, and sometimes at Liberty; as we find other Trumpery will be under a Current: So that, supposing the Miller had very diligently cleared that very Stake but half an Hour before, what hinders the Possibility but that the next half Hour the Gown, either by itself, or together with other Trash, might be carried thither by the Stream and lodged?

Secondly, *Because she was found floating; of which you make no Doubt, because it was sworn by several Witnesses.*

I have already taken Notice, that from this there can be nothing certainly inferred: Dead Bodies thrown into Water, I am satisfied, will often sink; and drowned Bodies sometimes will not: But as to the Case before us, 'tis plain that some

some of those who viewed the Body gave a different Relation from some others. Thus some of them said she did float, though it was under Water; whilst others, who should know best, being the Parish-Officers, and employed by the Coroner to take her out, depose, that the Body lay half a Foot under Water, and that, for any thing they could perceive, her Feet might touch the Bottom; and farther, that when she was heaved up, there were several Sticks and Flags on which she rested: But without all this, Sir, I think it very natural for a dead Body, which is always boyant, in a Current four or five Foot deep, by the bare Force of the Stream, when it meets with a slanting Opposition, to be raised from the Bottom.

Page 494. Thirdly, *Because her Belly was not at all swollen.*

Nor was it at all necessary, though drowned, that it should.

Fourthly, *Because no Water came out of her when lifted out of the Water, nor purged from her afterwards.*

This, with Submission, is a Mistake: For tho' there is no Quantity of Water taken notice of to issue from her, yet it is agreed on both Sides, that she did purge at the Mouth and Nostrils; some say more, others less. The two principal, who took her out, and stood by for some time afterwards, do affirm, that the Froth came out after such a manner as to run down the Sides of the Face, and that as it was wiped off, fresh Froth came presently on again; which Dr. Crell does assert could not have happened, had she been strangled, or otherwise killed, before. Whether this be so or not, I believe it very possible, where little Water is received (and very little will suffice to drown a Person) if there be so great a Purgation at the Mouth and Nostrils, moist, if not all the Water may be turned into a spumous Matter, at least so much that there will be no absolute Necessity for Water to run out upon the Motion of the Body afterwards.

Fifthly, *Because her Inwards were not putrified.*

After six Weeks Time I should indeed have expected Putrefaction from any Person under Ground, that had not been embalmed, without Regard to Water taken into the Body; which whether or no it hasten Putrefaction, is very disputable: What it may do under the Earth, I know not; but I much question, whether dead Flesh, covered over with Water, will grow putrid so soon as that which is exposed to the immediate Contact of the Air. Of this I shall be able to say more in a little time, and for the present leave it as a Problem undecided.

Sixthly, *From the several distinct Settlings of Blood, unusual in drowned Persons.*

Upon the Trial, it is affirmed by Mr. Camlin, that both Mr. Dimsdale and himself having viewed the Body, did give it in as their Opinion to the Coroner, that there were no other Settlements or Stagnations of the Blood, than what may usually happen to drowned Bodies: Mr. Camlin instances in the Child for one; but whether that were so or not, I have perceived it myself on the Superficies of a drowned Body; nor do I see why it may not be found on the Neck and Breast, as soon as on other Parts.

Page 495. Seventhly, *From the continual Disturbances Mrs. Gurrey was under, both in Mind and Body; nevertheless she would not discover it, till she was almost frightened out of her Senses, by the Voice,*

*as she thought, of Mrs. Stout, which uttered these Words, Divulge, conceal nothing.*

If Mrs. Gurrey was disturbed in Mind, it would seem strange that she should not be disturbed in Body; the latter being, as I suppose, seldom or never easy whilst the former is under Trouble or Disquiet. But whether Mrs. Gurrey's mighty Disturbance had other Rise than a Whim of the Brain, founded upon a strong Prepossession of Fancy, may very reasonably be questioned: For my part, I look on it so natural for a doating, ignorant old Woman to be terrified with the Disorder of her own Imagination, before hand perverted by too deep Reflection, though the same has nothing but a *Chimera* to support it, that I am never startled when I hear of their Pretences to Voices and Revelations. These you know are not ingrossed, though more peculiar to a distinct Sect. So that if once such Persons happen to be strongly opinioned that any thing may be so, they need but fall asleep, for a Confirmation that it is so.

Had you not already acquainted us with the Weakness of your Intellect, and your Incapacity, &c. I should have been startled that a Man of Learning and solid Judgment should build on the idle Fancies of a dreaming old Woman. I think, how greatly soever she might be disturbed before in Mind or Body, she has now more Reason to be concerned, that by a fond Belief of a Revelation, those Men should be brought into Danger of their Lives, whom we have a great deal of Reason to believe were as innocent as herself, and little or none to think they should be guilty of such a horrid Fact as they were accused of.

Eighthly, *From what is sworn by the Gurreys against their Lodgers at the Trial.*

Could I believe all to be true that the Gurreys swore, I should make no question of the Likelihood of these Men's Guilt: But that they did stretch in some things, is very easy to believe, by some Particulars at the Trial; and by their Behaviour before, at, and after the same, we have great Inducements to persuade us that they did so in others. Thus it is proved that Gurrey himself went out of the Court in a boasting way, to tell some of his Acquaintance, That he had done Cowper's Business; or to that Effect. And at another time he said, That if Mr. Cowper had visited old Mrs. Stout, none of this Trouble had befallen him. Another thing discovers the Malice of the Prosecution, in that though themselves suspected Mrs. Stout's Maid, yet this was not to be taken notice of, for fear of taking off her Evidence: And if his Wife could so readily turn the Fifty Shillings Mr. Marson had that Day received in Southwark, for Business done in the Borough-Court, into Fifty Pounds, supposed to be paid him for murdering Mrs. Sarah Stout at Hertford; she might by the same kind of Improvement, or by a Mistake, understand all the rest.

It seems indeed to me the most notorious Absurdity that can be imagined, that had these Men really came down on such a Design, they should go directly to tell their Landlady, Mrs. Stout's Business was done; they had spoiled her courting Days; and that one of them had received Fifty Pounds for doing her Business.

In Matters of this Nature, where we can have nothing but idle Stories and an Old Wife's Dream, to raise the Suspicion, I think it highly behoves us, before we pass our Censure, to pay a just Regard to the Character and Reputation of



of the Person. Thus indeed, though it will be impossible for Mr. Cowper to clear himself, in the Opinion of every one who knows nothing of him; yet I am ready to think, there are few who know him (unless some particular Persons, that upon any Terms would willingly ruin the Interest of his Family in that County) will be brought to a Persuasion he could so barbarously imbrue his Hands in Blood, though instead of the pretended One thousand Pounds he might have gained Ten: And as to the other Persons, 'tis visible they live in Credit and Reputation, their Characters well attested, and not one of them in the least likely to make an Assassine for the Lucre of Five hundred Pounds.

Page 495. Ninthly, *From the Sentiments of the Grand Jury.*

I must needs think, that on so formal an Indictment drawn up against these Gentlemen, such strenuous Allegations of their being guilty, so foul a Crime charged on them, such a Circumstance attending as that of Mr. Cowper's being last in her Company, and the others of his Acquaintance; especially when Mrs. Gurrey's Tale had been set out with abundance of Aggravation; I see not how, for publick Satisfaction as well as private, the Grand Jury could do less than find the Bill. But as to the Petty Jury as you call them, I wish you had named those several who did believe her murdered after the Trial: I am assured that some of them have openly declared, they thought the Gentlemen we speak of had been so much abused, that the Prosecutor's Estate, if it were ten times larger than it is, was little enough to make them Reparation.

As to the Letters produced in Court, your Thoughts it seems are, *That they are not of a legitimate, but a spurious Issue*: And why?

1. *Because the Stile doth no ways suit her Character.*

If the Author of the *Hertford Letter* had no extraordinary, or perhaps no Knowledge at all of her, but takes every thing on Trust from her Friends and Relations; he ought not to be so positive, that the Stile does no way suit her Character. If by Stile, as the Word generally is understood, you mean the Order of her Thoughts, or the Manner of her Expression, you must own she might have Sense enough to be the Author of those Compositions. But I find you make so bold with the Use of Words, and take them so differently from other learned Men, that in some Places it occasions a little Difficulty to understand you. If by Stile then, as I imagine, you would signify the Subject of the Discourse, or the Matter of the Composition; I have more Reason to think, than I will at present make publick, that these Letters do well enough suit her Character with some that knew her: And I must tell you, that I am ready to believe, had her Mother been asked the Question some Months before she died, when she had some Words with her one Evening in the Garden, or about the Time when *Theophilus* was sent for to reprove her, about her falling from the Light; I say, at these Times I can't think her Mother would have denied but that these Letters might have been suitable to her Character. However, she is now out of a Capacity to defend herself; and upon that Account it might seem ill with Contempt to tread upon her Ashes: I shall therefore say no more, but that I would not have you too busy

with the Character, lest you should happen to make good an old Proverb.

2. *Because the Mother doth affirm, the Letters shown in Court were of a smaller Character than ever she observed her Daughter to write; neither doth her Brother think them to be genuine.*

Would it not have been very odd, if the Mother and Brother, who came to secure the Reputation of so near a Relation (though never so well satisfied that it was her Hand) should have said otherwise than they did? For my part, I take both their Answers to be so unsatisfactory, not to say foolish, that nothing but the Relation they were speaking for can plead their Excuse.

The Mother being asked by the Judge, whether she thought it was her Daughter's Hand? replies only, *How should I know? I know she was no such Person; her Hand may be counterfeited.* Being questioned again, what she would say to it if it had been written in a more sober Stile, she answers, *I shan't say it to be her Hand, unless I had seen her write it.*

The Brother being interrogated on the same Question, says, *'Tis like my Sister's Hand*: But being asked if he did believe it was her Hand; he replies, *No*: And why? *Because it does not suit her Character.* Now let the World judge, if this contains any more than if the Mother had said, *Because she was my Daughter, or the Brother, Because she was my Sister, we won't believe it, lest the World should look on her to have been a lewd Woman.*

3. *Because there was no Mention made of these Letters, till the Common Report of her being with Child (which had been industriously spread abroad by several, but by none more zealously than by a nominal Quaker, her former Admirer) was proved to be false, &c.*

If these Letters were taken notice of so soon as the Report of her being with Child, it was very early; for that Morning she was taken out of the Water, it was whispered in the Country, and at Night I heard from some in *London*, that they believed it very likely for her to be with Child; and that to prevent the ensuing Infamy she had made herself away. This was no more than what is generally suspected, when a single Gentlewoman is by any means accessory to her own Death. So that without Dispute, if the nominal Quaker had not been concerned in it, the Report would have spread without him. But I judge this Epithet is bestowed on him, not so much for that he thought and reported her to be with Child, which hundreds did besides him at that time, but because he was so very officious to prove her Hand by his Receipt.

This may indeed be thought a mean-spirited Action from him, as he had been her former Admirer: And I think if her Hand-writing could have been proved without his Appearance, he should have stirred last. However, I would not have you so very angry at him, since I don't find that he got any thing more by it, than to have the Judge informed that he was one of their own Sect. And if for this only he must be a nominal Quaker, I could tell you of some that have had great Parts to act in this Prosecution, that are as far from being real Quakers (if to be so is a Perfection) as Mr. B—.

4. *Because Mr. Marlon and Mr. Archer on the Trial swear, That Mr. Cowper deposed, That Mrs. Stout was a modest Person, &c.*

When

When Mr. Cowper was before the Coroner, he dreamed not of the approaching Storm that was coming upon him: And I think 'twas not reasonable that he should concern himself at all with her Character; there were not wanting those who were ready enough to think he had been too familiar with her; and that on some Resentment taken at his Carriage to her she had destroyed herself: So that if it were only to wipe off this Suspicion, his Account of her was no other than what any Man under his Circumstances might have given. I can't tell what you might have thought of him, but had he told the Coroner he knew she was melancholy; that it was upon his Account, for that having formerly been very civil to her, he grew of late sick of her Acquaintance; and that because in his last Visit he had betrayed some little Indifference, and notwithstanding her Importunity, would not stay to lie at her House; she had therefore in a Passion thrown herself into the River; if Mr. Cowper, I say, had given the Coroner such a Relation as this, I should have thought him a Person of very little Understanding.

Page 495. As to her Melancholy, I believe it was such as did make her Head and her Heart ache also; and that it was more than a common Hemicrane, whatever you (who had perhaps no great Intimacy with her) may imagine, or her Mother and Brother give out, I am satisfied there wants no Proof of such a Melancholy as was next to a Distraction. There is a certain Gentlewoman now in being, who cannot deny that she had heard Mrs. Stout wish herself dead, saying, she was the miserablest Creature living; and that she hoped if 'twere possible to die after such a Manner that the World might know nothing of the Matter, nor ever so much as mention there had been such a Person living. But indeed her Melancholy is too well attested to be so much as doubted of by any disinterested Person; and therefore as you are apt to think there are many Friends and Relations bigotted to a Party, that will not boggle to tell a Lye to save a Friend or near Relation from — I suppose you mean *the Gallows*; so on the other hand, I believe there may be those in the World who would not scruple to tell an Untruth, which is of near kin to a Lye, and if it were in their Power, would bring a Man to the said Place, rather than it should be thought a near Friend and Relation was in love with a married Man.

The Gentlewoman you take notice of, so much importuned by the Deceased to stay with her that Night, if she has not altered her Story, will acknowledge that Mrs. Stout did tell her she was very much indisposed; and farther saith she, You see I am very melancholy, so that it will be the greater Unkindness if you leave me at this time alone.

Page 496. You say there are a thousand Pounds wanting of her original Fortune: I wish you had told us whether you set aside the Charge of the Prosecution; if you include this in the Want, one half might be expended that way; for I suppose there was nothing spared to carry it on.

I have heard of People's wanting that which they never had; and I am credibly informed this is the Case in Debate. Some of your Countrymen, that have been many Years acquainted in the Family, do tell me there is as much found as ever she could be thought worth; but if you

would be credited, you must give better Proof than yours, or her Relations say so. However, I think this to be very little material; she might, though in some Things be very frugal, in others be as extravagant; but which way soever 'tis gone, it seems nothing less can repay it than the Lives of Persons who had never seen her.

Though the Quakers Affirmation will not be taken in Criminal Cases ('twas well I think that it was not admitted in this particular one) yet they have now the Privilege to publish their Reasons, why they suspected Mr. Cowper to be privy to the Receipt of any of her Money, more than that which the Writings found in her Custody, and his own Acknowledgment do evince. I am sure he has bid them a fair Defiance, having openly challenged the worst of his Adversaries to discover what they can of this Nature.

If they think fit to draw up any thing of this kind, I should advise them to make use of some abler Clerk than the Author of the *Hertsford Letter*; for if he has the Management, 'tis a great Chance if we are not entertained with one of Mrs. Gurrey's Dreams, or some such ridiculous Innuendo.

Page *ibid.* In this Place we are once more acquainted with the Use of the *Epiglottis*; which you will have continually to close on the Mouth of the *Aspera Arteria*, unless in Expiration. On the contrary, I have told you (and will submit myself to any Anatomist in *Europe*) that it is for the most part open, and never exactly closes but upon *Deglutition*; so that whatever you build upon that Notion, must fall to the Ground.

Page *ibid.* I think 'tis but reasonable, that Mr. Baron *Hatsell* return his Thanks to you, for the Compliment you put upon him in the Close of your Letter. I am ready to apprehend, that there is no Trial suffer'd to be printed, till after the Examination of the Judge, and his Permission first obtain'd; and therefore must needs think Omissions and Alterations, especially of great Moment, as these should be, which you insinuate, is a very great Injustice to the World, an Injury to Truth, and too sinister an Action for a Judge to be guilty of. But let who will stand in your Way, I see you will have a Fling at them; and rather than be thought to have nothing at all to say will be telling us of that which, if possible, comes to less.

Thus, to heighten a Suspicion of Guilt, we are entertain'd with a Tale of a Tub, about Mr. *Stevens's* being ill; or, as you express it, taken with a strange sort of Fit. I hope, Sir, 'tis not always an Argument of a Man's Guilt, that he cannot carry himself unconcernedly, when he sees his Life hanging by a Hair, or depending on the Delivery of a Word or two from the Foreman of a Jury: 'Tis Time enough to censure, when we ourselves have undergone the Trial.

Your Story of the Wine-Cooper I have never heard of; and really, I am so desperate jealous of your Relations, that I dare not credit them, till they come with more Authority: When I have better inform'd myself, I shall be better able to give you my Opinion.

Your Prayer, methinks, with which you conclude, had better have been left out; since, though it wants the Length of the *Pharisees*, whoever takes notice of the Spirit that runs through the whole Letter, will need no Arguments to persuade him that it proceeds from an



Hypocrite. There is little Appearance that 'tis your Desire the Innocent may be cleared from Aspersions cast undeservedly on them, when for more than Six Pages, you are venting the utmost of your Malice, and by the basest Means imaginable, would insinuate those Gentlemen are Guilty, who, for any thing you know of the Matter, may be as innocent as yourself.

Let me tell you, Sir, I think it a very bold Attempt, and such as 'tis great Pity does not come under the Lash of the Law. When a Gentleman has taken his Trial, and it does appear upon that Trial, there is no Proof of the Fact he is charged with, nor indeed any Thing on which to ground so much as a Suspicion, unless that of his being unfortunately the last Person in her Company: In a Word, when Faction and Personal Prejudice appear the only Motives of the Prosecution, whoever brings the Business afresh on the Stage, does only expose the Restlessness of his own Mind, and plainly evidence that he is neither a true Gentleman, nor a good Christian.

I have look'd over your Postscript; and, as in many Places of the Letter, perceive through the Weakness of your Intellect, or your Unfitness for the Controversy, you have made good your Prognostick of betraying a little Ignorance.

First of all you tell your Friend, You make no doubt but he has heard, that the Surgeons that open'd Mrs. *Stout's* Body, deposed she was a Virgin. Now if he had heard as much before, as you make no doubt he had, I don't see to what Purpose, or what News it could be to inform him of that he had heard before; but being fearful it had not reached every Body's Ear, I make no doubt, this Intelligence is to inform the World. But doubt you as you please, had I found the Surgeons deposed as you report, I should be ready to doubt whether they were Wise Men or Fools.

I find nothing like it in the Affidavit, of which you say you have deliver'd us a true Copy.

They tell us, indeed, *They found the Uterus perfectly free and empty, and of the natural Figure and Magnitude usually in Virgins*; but surely this will not amount to a Deposition, that she was a Virgin: All that can be hence infer'd, is only that she had not conceived; and if it be possible for a Woman in Coitu to miss of Conception; if missing of a Conception, the Womb may, notwithstanding the Carnal Contact, retain the natural Form and Figure usually in Virgins; why then, I say, all this implies no more than a bare Probability that she had not known a Man.

I must confess, till now, I never heard that the Figure or Magnitude of the Womb, were number'd amongst the indubitable Marks of Virginity: And as to the State of the *Vagina*, the *Myrtiform Caruncles*, and *Hymen*, which Mother *Peppercorn* herself could only guess at, there is no Notice at all taken; if there had indeed, it would only have furnish'd Matter of Derision, the Body having been so long interr'd. So that you see, for any thing pretended to in the Affidavit, or elsewhere, she might not be a Virgin; though Charity should oblige us to hope at least that she was.

#### POSTSCRIPT.

SINCE this REPLY went into the Press, I have been inform'd by a Gentleman of unquestionable Credit, that the Story of the Wine-

Cooper, at the Close of the *Hertford Letter*, took its Rise only from what follows.

There was, it seems, a Person going down to the Assizes, who had the Misfortune to be thrown from his Horse, and was taken up as dead: Being carried to his Lodging; he began to rave and to talk idly; which was no more than the Effect of a Delirium, arising from the Concussion of his Brain, which might have made any Man light-headed as well as he; and which nothing but one as mad could have improved after such a Manner as the Letter-writer has done.

By this the Publick may be inform'd of the Disingenuity, not to say downright Villany, of some People in the World; who missing their Design of taking away a Man's Life, seek all possible Ways of murdering his Reputation.

*Some OBSERVATIONS on the Trial of Spencer Cowper, J. Marson, E. Stevens, W. Rogers, that were tried at Hertford, about the Murder of Sarah Stout; together with other Things relating thereunto.*

TO lead, and to give some light into this Matter, it may be necessary to give some Account here, how, and upon what Occasion the Acquaintance of *Spencer Cowper* and *Sarah Stout* began.

The Ground and Rise thereof took its Original from her Father, who at all Elections promoted the Interest of the *Cowpers*, to the utmost of his Power; through which a great Intimacy was created between the Families of the *Cowpers* and the *Stouts*; which did not expire with the Death of her Father; for her Brother, by the Father's side, continued his Respects to that Family, and spared no Pains to espouse and carry on their Interest, in order to their being chole Parliament-Men for that Town. These Obligations engaged the two Families to a frequent Conversation; insomuch that when they were in the Country, some or other of them were often together, as well the young Women as the Men; as appeared by what his Brother's Wife said at his Trial, *That she was but six Days at Hertford the Summer before, and that she saw her (to wit, S. Stout) every Day.* And great Pretensions of Love, and Proffers of Kindness, were expressed by the *Cowpers* in general to the *Stouts*; and by this Man, *Spencer Cowper*, and his Wife, in particular, to the deceased young Woman: And thus it continued, in Appearance, till the Day that she was forced off the Stage of this World.

When her Father died, he left her sole Executrix, and gave her most part of his Personal Estate: And a considerable part of it being in the Brewers Hands, and in Malt, which she sold afterwards, she was often advising with one or other, how to dispose of this Money, so as to have good Securities for it.

About a Year before her Death, she went to London about those Occasions, and lodged at a Goldsmith's House; as soon as the *Cowpers* Wives heard where she was, they made her a Visit, both *Spencer's* and his Brother's, and invited her to their Houses.

Whilst she lodged at this Goldsmith's House, he laid out several Hundred Pounds for her in Malt-Tickets, and other Securities of the Government; but she being not willing to lay out much

much that way, but rather on some Mortgage of Land, she went to a Lawyer, with whom she was acquainted; to see if he could dispose of some for her; he told her, he could help her to a Mortgage for Five Hundred Pounds; but they would give but Five in the Hundred: So she takes it into Consideration; but afterwards, she being at Mr. *Spencer Cowper's*, and he falling into some Discourse with her, about her Affairs, and understanding she had a considerable Sum of Money to put out, he proffer'd to do her all the Kindness that lay in his Power; and would help her to a Mortgage of Land three times the Value of the Money lent on it, at Six in the Hundred; and would see that the Title should be good, and be as careful in it, as if it were his own Concerns; and if she wanted Council at any time, either to put out, or to recover Money that was owing her, or any thing else, for which she had Occasion, he would give it her *Gratis*, which from another must cost her some Guineas: So she accepted of his Proffer, and told him, she would depend on his Advice, not questioning to have good Security for her Money. When she came home to her Lodging, she told the Goldsmith where she lodged; that now Mr. *Spencer Cowper* had promised to help her to Securities, and he was to dispose of her Money.

Soon after this, she went Home to *Hertsford*, and told her Mother the same, and ask'd her if she had any Money to put out; if she had, it might go amongst hers, and her Mother should have no Trouble with it; for she would pay her the Interest as it became due: Her Mother then ask'd her, if she could so far confide in him, as to receive her Money, to pay it, and to make the Writings, and to look after the Title, and all without the Inspection of any Body else? She said, Yes, she believed that he was a very honest Man, and she thought she might trust him with more than she had to put out; and he being a Man of Repute, it was below him to wrong her. Then her Mother, thinking the same, gave her One Hundred and Fifty Pounds to put amongst hers; which she hath never heard of since, but it is gone with the rest.

About a Month after, *Spencer Cowper* came to *Hertsford*, and took Lodgings for his Wife and Family, and then brought his Wife to give this young Woman a Visit, and to be further acquainted with her. After this, she seemed to love and like her Company so well, that she said, *She did not desire the Company but of few, or none else in the Town; and therefore would make no Returns of their Visits, till the Week before she went home to London;* and would come frequently two or three Times in a Week to visit her: And when her Husband was in the Country, he sometimes would come with her, and thereby had the Opportunity of discoursing her about her Affairs.

When she had gathered in near what she intended he should put out, from the Brewers, and others that were indebted to her, she writ a Letter to *London* to him; and one of her Acquaintance coming to visit her, before she had sealed it up, she bid her read it, which she did; in which Letter she writ, viz. *That she had a Thousand Pounds to put out, and that several Hundreds of it were then ready; and the rest, to make up that Sum, would be so in a little Time, or so soon as he could dispose of it advantageously for her.*

After this, she several Times, in Discourse with this Woman, hath told her, *That he was buying an Estate for her, in Ground-Rents, which he had recommended to her for an extraordinary Pennyworth; and that it would be sold for a Thousand Pounds, but he believed it was worth more; and if he could not oblige her with it, he looked upon it to be so great a Bargain, that he would buy it for his own Use:* And she also told her Mother the same.

The next Quarter Sessions after this, which was the last before that Assize, at which Time her Days were ended, *Spencer Cowper* came to *Hertsford*, and in the Evening he came and enquired for Mrs. *Sarah Stout*, at her Mother's House, where he was not at all expected to lodge, he not having lodged there for several Years, viz. not since her Father died: And after about an Hour's Discourse with her, he said, *He was destitute of a Lodging, for his Landlord Bates (where he used to lodge) was discomposed, and made a great Noise, and he did not like to lodge there.* So she thought she could do no less, in Civility, than ask him to lodge at her Mother's House, he having then brought her that Mortgage-Deed, for Two Hundred Pounds, about which he made such a long Discourse at his Trial; which Money had been carried publickly to him some Time before: At the receiving of which Security, she seemed to be very much pleased. But she having told him, that she intended to reserve some Part of her Portion, for her own particular Use, in case she lived to marry, which she would put out for that End, she having enough besides; he advised her then to keep it private from all Persons, else her End would be frustrated; which, in all likelihood, he thought she had, and that none had known her Mind in that Particular, but himself, he having advised her to Privacy.

Indeed *S. Cowper* doth suggest, in a Case lately presented to some of the Members of Parliament, (see *ante* Pag. 485, to 488,) That his Prosecutors had not the Impudence to suggest at his Trial, (though put in mind of it) that what they accused him of, was done for the sake of Grain. It is true, he did demand a Proof, that he had any of the deceased young Woman's Money in his Hands: And it cannot be supposed that he would conceal it, if he knew there was any one alive that could make positive Proof of it; for then it would have been in vain to have denied it: But her Mother did then attempt to speak what she knew in that Particular, and other Things too, but was stop'd several Times, and not suffer'd to speak, unless she would swear; which, he knew well enough, her Perswasion would not admit her to do.

The next Thing observable is, the same Woman, before-mentioned, which saw and read her Letter sent to him, which gave an Account what Money she intended he should dispose of for her, and that she had several Hundred Pounds of it then ready: She being with her one Day in her Chamber, about two Weeks before her Death, she bid her look in a Drawer there, and bring her the Money therein; upon perceiving it, *Am not I very rich?* said she; the other demanding the Reason of that Question, *Because,* said she, *it is all the Money that I am now Mistress of;* which was only two Guineas, and a little Silver, notwithstanding she had so many Hundred Pounds in her Possession not long before. And about the same



same Time, she being in Discourse with another Person about her Concerns, she said, *That Spencer Cowper had a great deal of her Monies in his Hands, and that he was to have more*: And her Relations do misg about a Thousand Pounds; and they know of none she disposed of any other ways, after she writ that Letter to him. And when her Mother asked him, before the Lord Chief Justice Holt, What Money he had in his Hands of her Daughter's? he said, *None*; and also said, *He thought his Reputation would have secured, or carried him above Suspicions, or Examinations of that kind*.

But it may easily be gathered, who carried her Money away, for a great deal of it was in Gold; and that very Morning he went away, when he had lodged at her Mother's House, he very much importuned her to come to his House at London, and told her how glad his Wife would be of her Company, and used many Arguments to persuade her to it; and at length said, *He would not go out of the House, till she had promised him to come*: But she refused to promise him, and said, *She did not know when she should come to London*. This Discourse was in the Hearing of one that will evidence it upon Oath.

The Week before that Assize, she received a Letter from his Wife, which was writ after the usual manner, as she had several not long before, very earnestly inviting her to her House at London, with high Expressions of Love; and so much the more she desired her Company then, because she believed they should not come to lodge at Hertford that Summer: And in that Letter tells her, *That they must expect her Husband at their House at the Assize*; the which she told her Mother, and others, who read the Letter. This Letter Spencer Cowper confessed to the Coroner's Inquest, that he ordered his Wife to write it for his Lodging at her Mother's House; but when he was examined by the Lord Chief Justice Holt, he then denied it, and said, *His Wife writ no Letter*: But her Maid, *Sarah Walker*, being present, told him, *His Wife did send a Letter, and that she herself took it in of the Post-Man, and gave it to her Mistress*; so then he could not deny that there was a Letter sent.

And accordingly he came, and sent his Horse thither; and being asked, before he rid from the Door, Whether he would come to Dinner? he said, *He was not certain, but he would send Word*: But her Mother and she staying long, and he not sending, they sent her Maid, to see whether he would come or no; who then quickly came, and dined there: And when he went from thence, the young Woman, *Sarah Stout*, going to the Door with him, asked, *If he thought to lodge at their House?* He said, *Yes, he would come and lodge at their House*. This she said as soon as he was gone, and then bid the Maid go get his Bed ready: At Night, when he came, her Mother being in the Room with her, he fell into some Discourse remote from any thing of her Daughter's Business; and after some Time, called for Pen and Ink, to write a Letter to his Wife, although it was not Post-Night, nor did any Carrier go next Day. When he went to write, her Mother and she went out of the Room, and stayed a considerable Time; but it growing late, the young Woman went in, to see if he had done, and if he would have any Supper; and what he desired, he had. Her Mother went not in again, because she knew her Daughter expected he would give

her some Account of her Money, and have brought her Security for it, as he did the Sessions before for Two Hundred Pounds; and she finding that he would not speak of it before her, would not interrupt them, but gave her Daughter Time and Opportunity to speak to him. What Discourse they had, is not known; but sure enough, it was very different from, and inconsistent with what he rendered it to be at his Trial; for he had writ a Receipt in full for Use-Money he paid her then, which lay on the Table, but was never signed by her, although he pressed her to it several Times, and bid her put on her Considering-Cap, (as he confessed to the Coroner's Inquest) and asked her, *If she was lazy?* Yet still she refused to sign it; which plainly shewed her Dissatisfaction, and that there was more due to her, else she would never have refused it.

Between Ten and Eleven of the Clock, she called her Maid to make a Fire in his Chamber, and to warm his Bed, in his Hearing; and while the Maid was doing it, he went out: Her Mother hearing the Door clap, went into the Parlour, to ask her what the Reason was of his going out when his Bed was a warming, and to her Surprise, found she was gone too, and never saw her alive afterwards. She admired what the Meaning of this should be, knowing that she never used to go out so late; neither could she imagine whither they should be gone; but after some Consideration, did think he might tell her, That the Securities she expected were to be signed and sealed somewhere in the Town; and that he had persuaded her to go out upon that Account, and so was in Expectation of them quickly. The Maid that was warming his Bed, stayed, expecting him to come up; thinking, when she heard the Noise of the Door, he was gone to carry his Letter somewhere; which, it's thought by some, was his Pretence in going out, thereby to draw her to the Door, to let him out; for there is no Ground to believe she went any farther with him willingly: So they sat up all Night, both her Mother and the Maid, expecting them every Minute, not knowing where to look for her at that Time of Night; but if they had, would never have gone to the River, where she was found floating the next Morning; for there was no manner of Circumstance, either in her Words or Actions, that did give them any Cause to think she would drown herself, or that she ever had any thing of that nature in her Thoughts.

No sooner was she taken out of the River, but it was spread, by his Party, both in City and Country, That she was with Child, and had drowned herself to avoid the Shame. That she was not drowned, is clear unto all who are impartial, and have had a true Account of the Case, either at the Trial, or otherwise; as it plainly appeared by those Settlements of Blood, and Bruises, about her Head and Neck, and on one of her Arms; and her having no Water in her, but was empty and lank, when she was first taken out of the Water.

The Evidence was very full and plain against them, and the Judgments of the Doctors stand firm and good, and are not, nor ever can be disproved, by all the Evasions and Distinctions of Voluntary Drowning, and Drowning by Accident; nor by all those little Tricks made use of by those on the other side, by Drowning, and half



half-Drowning of Dogs, and other such like Experiments, whereby they have only exposed themselves. But when she was taken up again, after she had been buried six Weeks, in order to be cleared of that infamous Report, which then was given out, for the only Reason why she drowned herself (to wit) her being with Child; then nothing could be more plain, than that she was not drowned, but came by her Death some other way, as the Doctors and Surgeons did give their Opinion upon Oath, before the Lord Chief Justice Holt, and at the Trial also.

And it is very probable, that these three Gentlemen, *John Marson*, *Ellis Stevens*, and *William Rogers*, knew very well how she came by her Death, (whose Lives *Spencer Cowper* seemed to be more tender of, than of his own) by their Discourse that Night her Death was, about an Hour after she was missing; for as soon as they came into their Lodgings at *John Gurrey's*, they could not forbear, but began to ask him several Questions about her. Although we do not understand, that either of them had any former Knowledge of her; yet *Marson* pretended, that he had made Love to her, and that she had cast him off; But, said he, *a Friend of mine is even with her by this Time*; then one of the others asked him, *If the Business was done? If it is not*, said he, *it will be done this Night*. Yes, says the other, *her Business is done*; *Sarah Stout's Courting Days are over*. What could have been spoke plainer, except they had said, *She is dead*? This was positively proved against them. Also, the said *Marson*, when he came into his Lodging, was in a great Sweat, and called for a Fire to dry his Feet and Shoes, they being wet both without and within; and pretended, that he was just then come from London, it being then between Eleven and Twelve of the Clock at Night; whereas it was proved, that he came into Town two or three Hours before. And when *Marson* asked the other Two, *What they had spent that Day*? One of them asked, *What was that to him*? He was to have Forty or Fifty Pounds for his Share. The said *Marson* also pulling out Money out of his Pocket, swore, that he would spend it all next Day, for Joy the Business was done. And whereas they say, in their Case to the Parliament, *They are Men in good Business at London*: If they are so, it had been well if they had stayed in it; for sure enough, they had no good Business at Hertford; neither did they pretend to any at all, but said, *They came only to see Fashions*, to the Woman where they lodged.

And it is very observable, how highly displeased *Spencer Cowper* was at her being taken up, and how he earnestly besought the Judge, that what the Doctors did, and said then, might not be allowed, or taken for Evidence; alledging, that she ought not to have been taken out of her Grave without legal Authority, for private Inspection of Parties, altogether amongst themselves; whereas there ought to have been some on both Sides, he says, lest they should have broke her Scull, and the Gentlemen should have been trépanned; and yet Doctor *Camlin*, Sir *William Cowper's* Doctor, was with them all the while, as Doctor *Coatsworth* told the Judge, and was sent for, on purpose to take off any such Objection; and did set his Hand to the Certificate, of her Clearness of that Scandal, with the rest of the Doctors: Which is as followeth.

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*WE whose Names are here under-written, having examined the Body of Mrs. Sarah Stout, deceased, do find the Uterus perfectly free and empty, and of the natural Figure and Magnitude, as usually in Virgins. We found no Water in the Stomach, Intestines, Abdomen, Lungs, or Cavity of the Thorax.*

*John Dimsdale, Sen. Robert Dimsdale, M. D.  
William Coatsworth, John Dimsdale, Jun.  
Samuel Camlin, Daniel Phillips, M. D.*

*Hertsford, April 28, 1699. Copia vera.*

When all Mouths were stopped, and put to Silence in that Matter, and no Reason could be given why she should drown herself; then *Spencer Cowper* was at a Loss, and knew not what to pretend, why she should do so; 'till (to use his own Words) some Heads were laid together, to contrive, that she was in love with him.

In order to this Design, those Letters were invented, which were produced in Court, (for not a Word was ever heard of them, before she was taken up again) and a Witness was provided, to prove the receiving of them both; but his Friend *Marshall*, who was his Witness, had forgot the Year when the first was writ, and said, It was *March* was Twelve-month; till his Memory was refresh'd by the second, which was dated but four Days after; and it seems they had forgotten to date that second Letter, so as to give it any Credit at all. This was that which he calls that importunate Letter, by which he was invited down to lodge at that Gentlewoman's House, which was dated the Ninth of *March*.

Now if her Maid *Sarah Walker's* Evidence is observed, which she begins with, *My Lord, on Friday before the last Assize, my Mistress Stout received a Letter from Mr. Cowper's Wife, to let her know we must expect Mr. Cowper at the Assize; and accordingly we expected him, and provided for his coming.*

This was the same Day on which he says he received her Letter of Invitation that she received his Wife's, by which he invited himself down. So that if she had really writ that Letter, his Wife's must needs be writ and sent the Day before hers could come to his Hands.

And how those Letters should be known to come from *Sarah Stout*, is very unaccountable: For if there had been such a Person as Mrs. *Jane Ellan* at that Coffee-house he mentions (which, upon Enquiry, we cannot hear there was) what had he to do to open her Letters? And how could he tell that they were for him, and came from *Sarah Stout*, seeing they were not directed to him, nor either *S. Cowper* or *S. Stout* within them, but only *Sir*?

To prove these Letters to be her Hand, he brings his Friend *Marshall* to shew Letters which he pretended she writ to him, as false as the other; in one of which there were Thanks for his Songs. It is very unlikely that she should desire or accept of Songs, one who was never heard to sing a Song in her Life; and from *Marshall* too, whose Courtship she never received: For he himself said at the Trial, that upon very little Trial she gave him a very fair Denial. And *Spencer Cowper* also said to the Coroner's Inquest, that *Marshall* told him, she always gave him the Repulse.



This confirms the Falseness of that Story which he brings to introduce his Letters. And altho' she is gone, and not in a Capacity to defend herself; yet the Woman who he says walked with them is alive, and doth affirm, It is not true; Which is as followeth:

He says, It happened one Evening that Mrs. Stout, and another, and Mr. Marshall, and he, were walking together; and Mr. Marshall and the other being a little before, she took that Opportunity to speak to him, in such Terms as he confessed it surprized him, and said, she did not think he had been so dull: He desiring to know wherein his Dulness did consist; she asked, if he thought she would marry Marshall? He said, Yes; else she had done ill in what she had done: She said, No; she thought it might serve to divert the Censure of the World, and favour her Acquaintance with him.

This Discourse, if it had been true, would have argued, that she kept Marshall Company, and made him believe she would have him: Whereas it seems she had never seen him in all her Life but once, and that was but two or three Days before; and they were not so much acquainted then, as to speak one to the other: And therefore there could be no Ground for such Discourses if she had walked alone with Spencer Cowper, which she did not; for the two young Women having been taking a Walk in the Field, as they were coming home they met Spencer Cowper and Marshall; and they both turned, and walked back before, and the two young Women together behind him: And she had no private Discourse at all with Spencer Cowper; neither had they four any Walk together afterwards, in the Field or elsewhere.

These Letters, which were ushered in by this Discourse, he would have it thought that the shewing of them was so tender a Point with him, and that he did it with so much Reluctancy and Compulsion, that nothing else should have forced him to have brought them upon the Stage, if he had not those three innocent Gentlemen to defend (surely they had greatly obliged him) And he solemnly protested, that if he had stood there singly upon his own Life, on that Evidence, he would not have done it: When at the same time, and with the same Breath, he himself proved it false; for he says, upon the receiving of them, he shewed one to his Brother, and both to Marshall, and they both saw it, and read it: That was the last, the Friday before that Affize, when neither his own Life nor his three Gentlemen were in any Danger; for she was then alive. And if there had been such Letters of hers, he could not have shewed them to one that in all Probability would have exposed or defamed her more than Marshall, a repulsed Lover, a Kinsman of his Wife's, unto whom he endeavoured to betray her; who, upon some Slight or Disgust she gave him, told Spencer Cowper, that if he was his Friend, he would shoot her. This she told both her own and her Mother's Maid: And also, as it is observed in the *Herford Letter*, the Printers, who writ the Trial in Short-Hand, not having taken those Letters, were favoured with the Copies of them, to be exposed to the World.

Then there was an Account given to the Judge, in the Court, of his going to *Depford*, and was said to be told his Father at Dinner in her Hear-

ing, about a Year and a half before; which put her into a Swoon, if any body will believe it: And the Use that was made of this was, to render her as bad as possible, and make the World believe how deeply she was in love with him. But it's Matter of Admiration to most that hear it, that he did not tell his Wife, as well as his Father and Brother, how fond she was of him: If it had been true, surely that would have diverted her from frequenting her Company so often as she did all that Summer following, as is before mentioned, which all the Neighbourhood can witness. And if she was such a Person as they now render her, why did they seek and desire her Company, as they did? for she has several times said, she never sought theirs.

And also, 'tis as much to be wondered at, that so chaste a Man as he would appear to be, and one in so flourishing a Condition, as he says he is, should order his Wife to write, or have any Thoughts of lodging at a House, for saving the Charge of a Guinea (for so he said at his Trial, that his good Husbandry to save a Guinea had brought all that Mischief upon him) where so lewd a Woman as he would have her thought to be did dwell, if he had been really invited; which sure enough he was not, but invited himself; and so she told her Mother before he came.

But it is plainly to be understood, that the Respect she had for him, was not as for one that she believed to be viciously inclined, but as for an honest Man; as appeared by the Trust she reposed in him; and also his being related to that Family, whom she, as well as her Relations, did so highly value and esteem, that she could have put not only her Money, but her Life into any one of their Hands.

She little thought what sort of a Man she had to deal with; she was so deceived by his seeming Sobriety when in her Company, and the great pretended Kindness to her by him and his Wife, both for her own Sake and her Father's, she could not imagine that a Branch of that Family could have touched a Hair of her Head, to have hurt her, or have wronged her of one Farthing: She was so honest and plain-hearted, and so innocent herself, and so far from deserving any ill Usage from him, or any of that Family, or indeed from any else, that she as well as her Relations could have served them to the utmost of their Power: But what Returns of Kindness have been made, and how she hath been treated and defamed, now she is gone, and not in a Capacity to defend or answer for herself, let the World judge.

But it is evident and plain, that most, or chiefly what he made use of at his Trial, to defend himself and his three Gentlemen, when he was not upon his Oath, is proved false, even by what himself did swear when he was examined by the Coroner's Inquest: For when they asked him, if he knew any thing that troubled or put her into a Discontent, or discerned she was melancholy, or knew any one she was in love with, or any Cause why she should drown herself; unto all which he answered, No, upon his Oath; he discerned nothing of Melancholy, neither knew he any that she was in love with: He knew one Marshall that was in love with her, but she had none for him, but always gave him the Repulse; and she was a very modest Woman, and he knew no Cause why she should drown herself.

And

And yet at his Trial both he and his Witnesses pretended to know her to be so melancholy as was near to a Distraction: And this Depth of Melancholy he would insinuate was for love of him; and therefore she drowned herself.

Now what can be more contradictory, or more fully prove that which he spake at his Trial to be false, than this which he himself did swear? And this was evidenced by two of the Coroner's Inquest, and several more would have done the same, if they had been suffered to speak; but, as the Trial relates, they were stopped.

Many Observations might be made, and Instances given, to clear her Reputation, and to prove the Falseness of what was cast upon her; as in particular, her so earnestly inviting a young Woman, an Acquaintance of hers, who had kept her Company that Afternoon, and used to lie with her sometimes, to stay and lie with her that Night her Death was; and she telling her, she could not well stay then, she engaged her to come and dine with her the next Day, and told her what was for Dinner; desiring her Company all Day after, she not intending to go from home; which she promised to do.

And it is very observable, from the Beginning of the Trial to the End, what Shifts and Devices he is forced to make use of to drill out the Time, that there might not be enough for the Witnesses on the other Side to be heard; and also his endeavouring to baffle the Evidence against him; as first, above twenty frivolous Questions he asked her Maid about Poison, which she bought to poison a mischievous Dog which haunted the House; and if he could by any means confuse and put her out, if she had not had Truth on her Side, and gladly would have picked something out of it, if he could have told what.

Also, the many impertinent Witnesses he calls to prove his Intention to lodge at *Bardford's* that Night her Death was, and sending for his Bag thither, and lodging his Things there; which it seems was not at all expected by them; for *John Bardford's* Wife said, upon her Oath, she believed *Spencer Couper* did not intend to lodge at her House; but was surprised when he sent to her, between Eleven and Twelve o'Clock at Night, to get his Bed ready, and came before it was quite done.

And the next Night after, when he was sent for by the Coroner's Inquest to give an Account where he left her, he said, In the Parlour where we sat. And being asked, if he did not hear her bid her Maid warm his Bed; he said, I thought she had meant her own Bed. But it is very unlikely that she would go to Bed and leave him sitting there; or that when he went out she should sit still, and not light him to the Door. But if it were as he says, that he left her in the Parlour; for a Man of his Education, and Figure in the World to go away at that time of Night, when he knew there was a Fire in his Chamber, and

his Bed was a warming, and let himself out in the Dark, and say nothing to any body, it certainly looks very darkly.

And then his sending for his Horse three times to her Mother's House the Night after her Death, before he was examined by the Coroner's Inquest, and would have gone out of Town then, if he could have had him, as he confessed to the Lord Chief Justice *Holt*; but at the Trial he said, I sent for him, for fear the Lord of the Manor should seize him.

Also, when it was taken notice of at his Trial, by the Council, that he never came after that Night her Death was, to give her Mother any Account where he left her, or in any wife to give her Satisfaction; to this he answered, It might be strange for me to come and visit a Woman that I never had the least Knowledge of: And yet he had several times lodged at her House when her Husband was living. And that Night also that he was examined by the Coroner's Inquest, when they asked him, if he discerned her Daughter to be melancholy; he said, No; only he thought she was not so free in Discourse at Dinner as sometimes he had seen her; for most of the Discourse then was between her Mother and him. Surely he will be hard put to it to reconcile himself in this Discourse.

And it is very remarkable, what great Diffimulation he manifested at that time; for in his Discourse, he taking Occasion to speak of the People called *Quakers*, he expressed so great Love for them, and for their Principles, that if ever he changed his Religion, he said, it should be for theirs: Notwithstanding he derided them so much at his Trial, about their being by Education intituled to the Light within.

Thus, in short, upon the whole Matter, it may be concluded, That the Defence he made for himself and his three Gentlemen, and the most material Things he made use of, whereby they got off, and were acquitted, were proved false out of his own Mouth before he went out of the Court; as it may be seen in the Trial, where the Counsellor for the King says thus:

"My Lord, we insist upon it, that this is a different Evidence from what Mr. *Couper* gave to the Coroner's Inquest; for then he said, he knew none she was in love with, nor any Cause why she should do such an extravagant Action as to drown herself: But now he would make the whole Scheme of Things turn upon a Love-Fit." And then he moved the Court to give Leave to call several Persons of Quality and good Repute, who were there present, to speak to her Reputation, in Contradiction to the Letters produced; declaring, that he believed the whole Town would do the same. Then the Judge said, They would grant that; and did not question it. So there was none permitted to say any thing to that Purpose.



## NUMBER XXXIV.

*A STATE of the PROCEEDINGS in the House of Commons, with Relation to the Impeached Lords: And what happened thereupon between the Two Houses.\**

*Sabbati 15 die Februarii, 1700.*

*Resolved,*

**T**HAT an Humble Address be presented to His Majesty, That he will be pleased to order all the Treaties that have been made between His Majesty and any other Prince or State since the late War, to be laid before this House.

*Ordered,* That the said Address be presented to His Majesty, by such Members of this House as are of His Majesty's most Honourable Privy-Council.

*Martis 18 die Februarii, 1700.*

Mr. Secretary *Vernon* acquainted the House, That their Address having been presented to His Majesty, That he would be pleased to order all the Treaties that have been made between His Majesty and any other Prince or State since the late War, to be laid before this House; His Majesty had been pleased to give Order, That they should be copied, and that then either the Originals or Copies, as the House pleased, should be laid before them.

*Martis 4 die Martii, 1700.*

Mr. Secretary *Vernon* presented to the House Copies of several Treaties, and Translations thereof.

And the Schedule or List of them was read, and is as follows; viz.

1. A Copy of the *French King's* Ratification of the Treaty of Partition.

2. The Translation of the same.

3. A Copy of the Ratification of the Separate Article.

4. The Translation of the same.

5. A Copy of the Ratification of the Secret Article.

6. A Translation of the same.

7. A Copy of the *French King's* Declaration upon the Treaty of Partition.

8. A Translation of the same.

9. A Copy of the *Dauphin's* Declaration upon the said Treaty.

10. A Translation of the *Dauphin's* Declaration.

*Ordered,* That the said Copies do lie upon the Table, to be perused by the Members of the House.

*Jovis 6 die Martii, 1700.*

Mr. Secretary *Hedges* presented to the House (according to Order) Copies of several Treaties.

*Ordered,* That the said Copies do lie upon the Table, to be perused by the Members.

*Lune 17 die Martii, 1700.*

A Message from the Lords by Sir *John Franklyn* and Sir *Lacon William Child*, That the Lords do desire, that this House will give Leave to Mr. Secretary *Vernon*, a Member of this House, to come to a Committee of the Lords now sitting in the Prince's Lodgings, to give an Account of some Matters relating to the Treaty of Partition which their Lordships have now under Consideration.

*Ordered,* That Mr. Secretary *Vernon* have Leave to go to the Lords as desired, if he think fit.

*Mercurii 19 die Martii, 1700.*

*Resolved,* That this House will, on *Saturday* come se'nnight, resolve itself into a Committee of the whole House, to consider of the State of the Nation.

*Veneris 21 die Martii, 1700.*

*Resolved,* That the Treaty of Partition be read.

And the same was read accordingly.

*Resolved,* That an Humble Address be presented to His Majesty, to return the Thanks of this House for His Gracious Message, wherein He is pleased to communicate His Royal Inten-

\* *Martis 24 die Junii, 1701.*

*Ordered,* That all the Proceedings with relation to the Impeachments, and what happened between the House of Lords and House of Commons, be examined by the Journals, and printed.

In Vol. 5. Page 339. are inserted, *Proceedings in Parliament against William Earl of Portland, John Lord Somers, Edward Earl of Oxford, and Charles Lord Halifax, upon an Impeachment for High Crimes and Misdemeanours; as also against John Lord Haverham, for Words spoken at a Conference between the Lords and Commons 1701. 13 Will. 3.* But it is observable, that those are the Proceedings as published by the Order of the House of Lords only: These here inserted are what were published by Order of the House of Commons; which are omitted in Vol. 5. but for what Reason no one can tell, unless Partiality: For as the Commons were the Prosecutors, sure their Evidence, and the Grounds they went upon, ought not to have been omitted.

tions to acquaint this House, from time to time, with the State and Progress of those Negotiations into which His Majesty has entered, pursuant to the Address of this House:

And also to lay before His Majesty the ill Consequences of the Treaty of Partition (passed under the Great Seal of *England* during the Sitting of Parliament, and without the Advice of the same) to this Kingdom, and the Peace of *Europe*, whereby such large Territories of the King of *Spain's* Dominions were to be delivered up to the *French* King.

Ordered, That a Committee be appointed to draw up the said Address. And a Committee was appointed accordingly.

*Lune 24 die Martii, 1700.*

Sir *Edward Seymour* reported from the Committee, to whom it was referred to draw up an Humble Address to be presented to His Majesty, That they had drawn up an Address accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and with an Amendment agreed unto by the House, and is as followeth; viz.

*Most Gracious Sovereign,*

“Whereas nothing can more conduce to the Safety and Honour of Your Majesty and this Nation, than taking the Advice of your *English* Councils, we Your Majesty's most dutiful and loyal Subjects, the Commons in this Parliament assembled, do, with all Humility, return Your Majesty our hearty Thanks for Your Gracious Message, wherein You are pleased to communicate Your Royal Intentions to acquaint this House with the State and Progress of those Negotiations into which Your Majesty was entered, pursuant to the Address of this House; which Method had Your Majesty been advised to take before the Treaty of Partition was perfected (which was passed under the Great Seal of *England* during the Sitting of Parliament, and without the Advice of the same) we had been prevented from laying before Your Majesty what we are now bound in Duty (though with Grief) to do, the ill Consequences of that Treaty to this Kingdom, and the Peace of *Europe*, which so directly tended to increase the Power and Greatness of *France*, by delivering up to the *French* King such large Territories of the King of *Spain's* Dominions, and to the Destruction of the Trade of this Kingdom; to which Treaty may justly be ascribed the Dangers which now threaten both this Kingdom and the Peace of *Europe*.

Resolved, That the said Address be presented to His Majesty by the whole House.

Ordered, That such Members of this House as are of His Majesty's most Honourable Privy-Council, do humbly know His Majesty's Pleasure when he will be attended by this House.

Ordered, That it be an Instruction to the Committee of the whole House, who are upon *Saturday* next to take into Consideration the State of the Nation, That they do take into further Consideration the Treaty of Partition.

Ordered, That a Committee be appointed to search the Journals of the House of Lords, what Proceedings are therein, with relation to the

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Treaty of Partition, and report the same to the House. And a Committee was appointed accordingly.

*Mercurii 26 die Martii, 1701.*

Sir *Edward Seymour* reported from the Committee appointed to search the Journals of the House of Lords, what Proceedings are therein with relation to the Treaty of Partition, and report the same to the House, That they had searched the Journals of the House of Lords accordingly, and taken Copies thereof; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same were read, and are as followeth; viz.

*A Copy of the Lords Journal.*

*Lune 10 die Martii, 1700.*

The House being moved, that a Day may be appointed for taking into Consideration the Treaties now lying before this House, it is ordered by the Lords Spiritual and Temporal, in Parliament assembled, That the said Treaties shall be taken into Consideration on *Wednesday* next at Eleven o'Clock in the Forenoon.

*Mercurii 12 die Martii, 1700.*

The Order being read for taking into Consideration the Treaties now lying before this House, the several Translations of Treaties were read, as follow; viz.

1. The Treaty of Defensive Alliance between *England* and *Holland*, *March* 3, 1677-8.
2. The Renewal of the Treaties between *England* and the States General of the United Provinces, *August* 17, 1685.
3. The Renewal of the Treaties of Alliance between *England* and *Holland*, *August* 24, 1689.
4. Ratification of the Treaty of *Ryswick*.
5. Convention between *England*, *Sweden*, and *Holland*, *May* 4, 1698.
6. Treaty between *England*, *Sweden*, and States General, in *January* 1698.
7. Separate Articles between *England*, *Sweden*, and *Holland*.
8. Ratification of the Treaty, *January* 17, 1698.
9. The Ratification of the Separate Article.
10. The Ratification of the Secret Article.
11. The King's Declaration.
12. The Dauphin's Declaration.

After which the House came to this Agreement, That the Lord Chamberlain do humbly move His Majesty, That all Matters or Papers any way relating to the Negotiations of the Treaties be laid before this House.

*Veneris 14 die Martii 1700.*

The Order being read for taking into further Consideration the Treaties;

The House was acquainted, That Mr. *Yard* attended with the Papers as agreed on Yesterday; he was called in, and delivered the Papers following at the Table, and then withdrew.

1. Copie du plein Pouvoir touchant Succession d' *Espagne*, *January* 2, 1698.
2. A Copy of the King's Warrant for affixing the Great Seal to the full Powers.
3. A Copy of the Ratification of Partition.
4. A Copy of the King's Ratification of the Separate and Secret Articles.



5. A Copy of the King's Warrant for affixing the Great Seal to the Treaty of Partition, Separate and Secret Articles.

These Papers were all read by the Clerk.

Lords Committees appointed to draw up and state the Fact as to the Treaty now in Debate, and all Things and Circumstances relating thereunto, and to draw an Address to be presented to His Majesty thereupon, and report to the House.

Dux Devon Dom. Senefcal'	Visc. Weymouth,
Dux Bolton,	Visc. Longueville,
Dux Leeds,	Dom. Willoughby,
March. Normanby,	Dom. Lawar,
Com. Peterborough,	Dom. Ferrers,
Com. Stafford,	Dom. Wharton,
Com. Tbanet,	Dom. Mobun,
Com. Kingston,	Dom. Culpeper,
Com. Burlington,	Dom. Lexington,
Com. Shafisbury,	Dom. Berkley,
Com. Nottingham,	Dom. Craven,
Com. Rochester,	Dom. Guilford,
Com. Abingdon,	Dom. Godolphin,
Com. Marlborough,	Dom. Cholmondley,
Com. Romney,	Dom. Herbert,
Com. Oxford,	Dom. Hallifax.

Their Lordships, or any Five of them, to meet to Morrow at Eleven of the Clock, in the Prince's Lodgings, near the House of Peers, and to adjourn as they please.

*Sabbati 15 die Martii.*

The Earl of Nottingham reported from the Lords Committees appointed to draw up, and state the Facts, as to the Treaty now in Debate,

That the Committee had met, and thought it proper to set down such Facts as appeared to them, viz.

1. That by the Treaty of Partition, Naples, Sicily, &c. were to be given to the Dauphin.
2. That the Emperor was not a Party to this Treaty, though principally concerned.
3. That no Minister of the States General met with the Plenipotentiaries of England and France, as were required by the Powers, at the making the Treaty in London.
4. That there were no Instructions in Writing to our Plenipotentiaries, though the Powers were unlimited, and that if there were verbal Orders given, yet it appears not to us they were considered in any Council.
5. That the Treaty, when perfected, was not considered in any Council before it was ratified.
6. That it appears, That the Warrant for Ratification was counter-signed by one of the Plenipotentiaries.
7. That the Treaty was transacted and signed, and the Great Seal affixed to it, during the sitting of a Parliament.

Then the House, upon Consideration of the First Head in the said Report, agreed to the same, with the Alterations following, viz.

Instead of (*given to*) put into the Hands of.

Then the Second Head was read.

After Debate thereupon,

The Question was put, Whether this Paragraph shall stand?

It was resolved in the Negative.

*Dissentient,*

First, Because it is manifest by the Treaty itself, that the Matter of Fact is true.

Secondly, Because the Emperor, as we conceive, had been the most proper to have been treated with on this Occasion; for 'twas more prudent and safe to have treated with the Emperor, to have restrain'd the Pretensions of France, than with France to lessen the Dominions of the House of Austria, which in its full Strength, and in Conjunction with the most considerable Powers in Europe, and with the Expence of more than Sixty Millions Sterling to our Share, was scarce able to withstand the Arms of France.

Thirdly, But admitting that the Emperor was not the most proper to be treated with; yet to prevent the Umbrage which might be taken by uniting too many Dominions under one Prince, especially such a Prince as without any Additions was formidable to all Europe, of all others the Emperor was the most improper to be left out of such a Treaty, for he was most concern'd in it; and our Ministers could not, or at least did not sufficiently support his Interests, or the just Ballance of Europe: But, on the contrary, as we are informed by one Lord who signed this Treaty, it was concluded against the express Desire of the Emperor.

De Longueville,	Normanby,	Nottingham,
Granville,	Tbanet,	Howard,
Abingdon,	Hereford,	Scarsdale,
Jeffreys,	Weymouth,	Craven.
Guilford,	Poulett,	
Tho. Roffen,	Leeds,	

Third Head. That no Minister of the States General met with the Plenipotentiaries of England and France, as were required by the Powers, at the making the Treaty in London.

After the Debate, the Question was put, Whether this Paragraph shall stand?

It was resolved in the Negative.

*Dissentient,*

First, Because the Truth of this Proposition is Reason enough for asserting it; and it must certainly be of fatal Consequence, if Ministers, without any Directions by Instructions in Writing, shall presume to act contrary to the very Commission that empowers them: And in this Case, the Assistance of the Dutch Ministers was the more necessary, because the Emperor was no Party to this Treaty, and the States General are more immediately concerned than we are to promote his Interests.

Secondly, But if this Treaty was concerted with the Dutch Ministers in 1699, before His Majesty's Return into England, as was asserted by one of the Lords who sign'd it afterwards in London;

1. This Treaty was made by those who had no Authority to transact it; for the Power was not granted by His Majesty till the second of January following.

2. As they acted without Power, so without Instructions too in Writing; which never was practised in any former Transaction Abroad.

Lastly, We conceive, that neither of the foregoing Facts ought in Reason, or according to the Method of Parliament, to be Ordered to be omitted; because, till the Committee had formed the

the Address pursuant to the Order, 'twas impossible to know what Use would be made of those Facts; for as they might have been improperly applied, and then would have been justly rejected, so there might have been so great Use made of them, and so opposite to the Design of the House in the intended Address, that 'twill be improper to omit them.

<i>Leeds,</i>	<i>Craven,</i>	<i>Jeffreys,</i>
<i>Howard,</i>	<i>Nottingham,</i>	<i>De Longueville,</i>
<i>Weymouth,</i>	<i>Hereford,</i>	<i>Tbo. Roffen.</i>
<i>Abingdon,</i>	<i>Granville,</i>	
<i>Tbanet,</i>	<i>Normanby,</i>	

After Consideration of the Report made from the Lords Committees, appointed to state Matters of Fact upon the Treaty in Debate, and to draw an Address thereupon, It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, that the Debate in the fourth Paragraph in the Report, shall be, and is hereby Adjourned till *Monday* next, at Eleven of the Clock, and all the Lords summoned.

*Lune 17 die Martii.*

The Order being read for resuming the Adjourned Debate upon the fourth Paragraph in the Report from the Committee appointed to state Matters of Fact, and draw an Address to His Majesty upon the Partition Treaty;

Some Lords of the Council having His Majesty's Leave, were heard relating to the Treaty: And Mr. Secretary *Vernon* being mentioned, a Message was sent to the House of Commons by Sir *John Francklin* and Sir *Lacon William Child*, to desire, that they will give Leave to Mr. Secretary *Vernon*, a Member of their House, to come to a Committee of the Lords now sitting in the Prince's Lodgings, to give an Account of some Matters relating to the Treaty of Partition, which their Lordships have now under their Consideration.

Ordered, That it be the same Committee as stated the Matters of Fact.

After some Time, the Messengers sent to the House of Commons returned this Answer:

That the Commons have given Leave to Mr. Secretary *Vernon* to attend the Committee as desired, if he thinks fit.

Hereupon the House was Adjourned during Pleasure, and the Lords went to the Committee, which being ended, the House was resumed, and the Earl of *Nottingham* gave the House an Account, that the Lords had been at the Committee, and heard Mr. Secretary *Vernon* to the Treaty of Partition.

Then after reading the fourth Paragraph, or Matter of Fact, reported from the Committee, and Debate thereupon, the House agreed as follows:

Whatever verbal Orders or Instructions were given, yet it appears not to us, that the Draught of the Treaty, when perfected, was considered at any Council when the King was present, or that it was advised or approved by any Council, or Committee of Council.

Ordered, by the Lords Spiritual and Temporal in Parliament Assembled, That the further Consideration of Matters of Fact in the transact-

ing the Partition Treaty, shall be adjourned till to Morrow at Eleven o'Clock.

*Martis 18 die Martii.*

The House went into Debate, pursuant to the Order Yesterday, concerning the Treaty of Partition; And it being proposed,

That it appears that there were Powers dated the first of *July* to treat with the Emperor, the Dutch and French Ministers, for securing the mutual Friendship, upon Terms most suitable to the Circumstances at that Time; and we are informed, that accordingly there was some Progress made in that Negotiation: But afterwards there were new Powers granted the first of *January*, to treat with the French and Dutch Ministers only, and the Treaty for the Partition of the Spanish Monarchy was concluded without the Emperor.

And after Debate thereupon,

This Question was put, Whether the said Proposal shall go to the Committee to be one of the Heads for the Address?

It was resolved in the Negative.

*Dissentient,*

<i>Normanby,</i>	<i>Nottingham,</i>	<i>Abingdon,</i>
<i>Granville,</i>	<i>Weymouth,</i>	<i>Guilford.</i>

Then it was farther proposed,

That it appears, That the French King's Acceptance of the Will of the King of Spain, is a manifest Violation of the Treaty; and humbly to advise the King, That in all future Treaties with the French King, His Majesty do proceed with such Caution as may carry along with it a real Security.

After Debate thereupon,

This Question was put, Whether the said Proposal shall go to the Committee to be one of the Heads for the Address?

It was resolved in the Affirmative.

*Dissentient,*

1. Because it may be construed to be an Ap-  
probation of the Treaty; which, as we conceive,  
was not intended by the House.

2. Because 'tis impossible to know the full  
Meaning and Extent of real Security.

<i>Normanby,</i>	<i>Nottingham,</i>	<i>Rochester,</i>
<i>Abingdon,</i>	<i>Granville,</i>	<i>Weymouth.</i>
<i>Guilford,</i>	<i>Godolphin,</i>	

The Lord Chamberlain acquainted the House, That he had a Message from His Majesty in Writing, which was read by the Lord Keeper, as followeth:

WILLIAM R.

" HIS Majesty having directed Mr. Stan-  
" *hope*, His Envoy Extraordinary, and  
" Plenipotentiary at the *Hague*, to enter into  
" Negotiations in Concert with the *States Gene-*  
" *ral of the United Provinces*, and other Poten-  
" tates, for the mutual Security of *England* and  
" *Holland*, and the Preservation of the Peace of  
" *Europe*: And the said Mr. *Stanhope* having  
" transmitted to His Majesty Copies of his De-  
" mands, made by himself and the Deputies of  
" the



" the *States*, upon that Subject, to the *French*  
 " Ambassador there, His Majesty has thought  
 " fit to communicate the same to the House of  
 " Lords, it being His Majesty's gracious Inten-  
 " tion to acquaint them, from Time to Time,  
 " with the State and Progress of those Negoti-  
 " ations.

*Kensington, March 17; 1701-2.*

1. The Proposals made to the *French* Amba-  
 sador by Mr. *Stanbope* were read.

2. Translation of the Resolution of the States  
 General for treating with Monsieur *D'Avaux*, the  
 two and twentieth of *March*, 1701-2.

*Jovis 20 die Martii.*

The Earl of *Nottingham* reported from the  
 Lords Committees, appointed to state Matter of  
 Fact upon the Treaty of Partition, and to draw  
 an Address thereupon, That the Committee had  
 accordingly drawn an Address to be presented  
 to His Majesty; which was read, and with one  
 Amendment agreed to, as follows, *viz.*

" WE Your Majesty's most dutiful and loyal  
 " Subjects, the Lords Spiritual and Tem-  
 " poral in Parliament assembled, having read  
 " and considered the Treaty, 21 Feb. 3 Martii,  
 " 1700. made with the *French* King, together  
 " with the separate and secret Articles which  
 " Your Majesty has been pleased to communicate  
 " to us, do with all Humility represent to Your  
 " Majesty, That to our great Sorrow we find  
 " the Matters thereof to have been of very ill  
 " Consequence to the Peace and Safety of *Eu-*  
 " *rope*: For besides the Occasion it may have  
 " given to the late King of *Spain* to have made  
 " his Will in Favour of the Duke of *Anjou*, if  
 " this Treaty had taken effect, the Prejudice to  
 " Your Majesty and Your Subjects, and indeed  
 " to all *Europe*, by the Addition of *Sicily*, *Naples*,  
 " several Ports in the *Mediterranean*, the Pro-  
 " vince of *Guipuscoa*, and the Dutchy of *Lorrain*,  
 " had been not only very great, but contrary to  
 " the Pretence of the Treaty itself, which was,  
 " to prevent any Umbrage which might be taken  
 " by uniting too many States and Dominions un-  
 " der one Head.

" And by all the Informations we have yet  
 " had of the Progress of this fatal Treaty, we  
 " cannot find, that the verbal Orders and In-  
 " structions, if any were given to Your Majesty's  
 " Plenipotentiaries, were ever considered in any  
 " of Your Majesty's Councils, or that the  
 " Draught of this Treaty was ever laid before  
 " Your Majesty at any Meeting of your Council,  
 " much less that it was advised or approved by  
 " any Council, or Committee of Council: We  
 " therefore think ourselves obliged in Duty to  
 " Your Majesty, and Justice to our Country,  
 " most humbly to beseech Your Majesty, that for  
 " the future Your Majesty will be pleased to re-  
 " quire and admit, in all Matters of Importance,  
 " the Advice of Your natural born Subjects,  
 " whose known Probity and Fortunes may give  
 " Your Majesty and Your People a just Assurance  
 " of their Fidelity in Your Service; and in or-  
 " der hereunto, to constitute a Council of such  
 " Persons, to whom Your Majesty may be pleased  
 " to impart all Affairs both at Home and Abroad,  
 " which may any way concern Your Majesty and  
 " Your Dominions; for as Interest and natural

" Affection to their Country will incline them  
 " to wish the Welfare and Prosperity of it much  
 " more than others who have not such Ties upon  
 " them; and as their Experience and Knowledge  
 " of their Country will also render them more  
 " capable than Strangers of advising Your Ma-  
 " jesty in the true Interests of it; so we are very  
 " confident, that after such large and repeated  
 " Demonstrations of Your Subjects Duty and  
 " Affections, Your Majesty cannot doubt of  
 " their Zeal in Your Service, nor want the  
 " Knowledge of Persons fit to be employed in  
 " all Your most secret and arduous Affairs.

" And since it appears, that the *French* King's  
 " accepting of the King of *Spain*'s Will is a  
 " manifest Violation of this Treaty, we humbly  
 " advise Your Majesty, in future Treaties with  
 " the *French* King, to proceed with such Caution,  
 " as may carry along with it a real Security.

It being proposed to send to the House of  
 Commons for their Concurrence to the said Ad-  
 dress,

And Debate thereupon;

The Question was put, Whether this Address  
 shall be communicated to the House of Commons  
 for their Concurrence?

It was resolved in the Negative.

*Dissentient,*

*Rocheſter, W. Oxon, Devonſhire.*

1. Because we conceive, that the last Clause in  
 the Address does necessarily imply a War, and  
 that a very long one, by reason of the Extent un-  
 intelligible (at least to us) of a *real Security*, and  
 the great Improbability of obtaining any Terms  
 of that kind; and since this necessarily implies  
 great Supplies, which can't be granted without  
 the House of Commons, we think their Concur-  
 rence in this Address absolutely necessary; and  
 that 'tis very improper for us to desire that of the  
 King, which, for want of such Concurrence of  
 the Commons, we conceive His Majesty will not  
 think fit or prudent for him to grant.

2. We conceive all the other Parts of the Ad-  
 dress very fit to be communicated to the House  
 of Commons; for upon the Success of it depends  
 the future Happiness of this Nation; and as we  
 cannot doubt of the Readiness of the Commons  
 to join in any proper Measures towards it, so we  
 think their Concurrence in it would highly con-  
 tribute towards the obtaining a gracious Answer  
 from His Majesty; and we cannot but think it  
 reasonable, that the Advice of the whole Nation  
 assembled in Parliament, should be made known  
 to His Majesty upon this Occasion.

3. Having desired the House of Commons to  
 permit Mr. Secretary *Vernon*, a Member of their  
 House, to come to the Committee of Lords, to in-  
 form them of some Matters relating to this Tre-  
 aty, we apprehend that the House of Commons  
 may think it extraordinary, and not suitable to  
 the good Correspondence which is highly neces-  
 sary between the Two Houses, not to acquaint  
 them with the Things which have come to our  
 Knowledge, partly by the Information of their  
 own Member.

4. And having been otherwise inform'd of  
 some Transactions relating to this Treaty, be-  
 tween the Earl of *Portland*, and Mr. Secretary  
*Vernon*,

*Vernon*, by Letters; of which we have not had a full Account, we think it may be very useful to the Publick to communicate this Address to the Commons, who have better Opportunity than we have had of enquiring into this Matter, which seems to be yet in the Dark, and which their own Member may help to explain to them.

<i>Leeds,</i>	<i>Kent,</i>	<i>Carnarvon,</i>
<i>Normanby,</i>	<i>H. London,</i>	<i>Weymouth,</i>
<i>De Longueville,</i>	<i>Bath,</i>	<i>Jeffreys,</i>
<i>Nottingham,</i>	<i>Abingdon,</i>	<i>Hunsdon,</i>
<i>Granville,</i>	<i>Guilford,</i>	<i>N. Duresme,</i>
<i>Craven,</i>	<i>Willoughby,</i>	<i>Tho. Roffen,</i>
<i>Tbanet,</i>	<i>Scarsdale,</i>	<i>Poulett.</i>

*Ordered*, That the whole House do attend His Majesty with the Address.

*Ordered*, By the Lords Spiritual and Temporal in Parliament assembled, That the Lords with white Staves do attend His Majesty, humbly to know what Time His Majesty will be pleased to appoint for this House to attend him with the Address.

*Martis 25 die Martii.*

The Lord Keeper reported His Majesty's Answer to the said Address.

*My LORDS,*

" **T**HIS Address contains Matters of very great Moment: I will always take Care, that all Treaties I make, shall be for the Honour and Safety of *England*.

*Ordered*, That the foregoing Report of the Lords Journal do lie upon the Table to be perused by the Members.

*Sabbati 29 die Martii, 1701.*

The Order of the Day being read for the House to resolve itself into a Committee of the whole House, to consider of the State of the Nation, and of the Treaty of Partition;

*Ordered*, That the Treaty of Partition, and the Report from the Committee appointed to inspect the Journals of the House of Lords, what Proceedings were therein relating to the Treaty of Partition, be referred to the Consideration of the said Committee of the whole House.

Then the House resolved itself into the said Committee, and after some Time spent therein, Mr. Speaker resumed the Chair; Col. *Granville* reported from the said Committee, That they had come to a Resolution, which they had directed him to report when the House will please to receive the same.

*Ordered*, That the Report be made upon Tuesday Morning next.

*Martis 1 die Aprilis, 1701.*

Colonel *Granville* (according to Order) reported from the Committee of the whole House, to whom it was referred to consider of the State of the Nation, and of the Treaty of Partition, the Resolution, which they had directed him to report to the House, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and agreed unto by the House, and is as followeth, viz.

VOL. VIII.

*Resolved*, That *William Earl of Portland*, by negotiating and concluding the Treaty of Partition (which was destructive to the Trade of this Kingdom, and dangerous to the Peace of *Europe*) is guilty of an High Crime and Misdemeanour.

*Resolved*, That *William Earl of Portland* be impeached of High Crimes and Misdemeanours.

*Ordered*, That Sir *John Leveson Gower* do go up to the Lords, and at their Bar, in the Name of the House of Commons, and of all the Commons of *England*, impeach *William Earl of Portland* of High Crimes and Misdemeanours, and acquaint them, That this House will, in due Time, exhibit particular Articles against him, and make good the same.

*Ordered*, That a Committee be appointed to draw up Articles of Impeachment against *William Earl of Portland*:

And a Committee was accordingly appointed.

And Sir *John Leveson Gower* went up to the Lords with the said Impeachment.

Sir *John Leveson Gower* reported, That he had been at the Lords (according to Order) and at their Bar had impeached *William Earl of Portland* of High Crimes and Misdemeanours, and acquainted them, That this House will, in due Time, exhibit particular Articles against him, and make good the same.

*Resolved*, That a Conference be desired with the Lords, upon Matters relating to the Treaty of Partition.

*Ordered*, That Mr. *St. John* do go to the Lords, and desire the said Conference.

Mr. *St. John* reported, That he having (according to Order) been at the Lords to desire a Conference, the Lords do agree to a Conference accordingly to Morrow at One a'Clock, in the Painted Chamber.

*Ordered*, That the Committee who are appointed to draw up the Articles of Impeachment, do manage the said Conference.

*Mercurii 2 die Aprilis, 1701.*

*Ordered*, That the Managers appointed for the Conference with the Lords, do withdraw into the Speaker's Chamber, and draw up what is to be offered at the said Conference.

Colonel *Granville* reported, That the Managers appointed to withdraw into the Speaker's Chamber, and draw up what is to be offered at the Conference with the Lords, had drawn up the same accordingly, and directed him to report the same to the House, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and agreed unto by the House, and is as followeth, viz.

" **I**T appearing by your Lordships Journal, That your Lordships have received Information of some Transactions between the Earl of *Portland* and Mr. Secretary *Vernon*, relating to the Partition of the *Spanish* Monarchy, the Commons having the said Matter under their Consideration, desire your Lordships will be pleased to communicate to the Commons what Informations your Lordships have had of any Transactions relating to any Negotiations, or Treaties of Partition of the *Spanish* Monarchy by Letters, or otherwise: And the Commons are fully assured, That your Lordships will readily concur in assisting them in this Inquiry, which they conceive absolutely necessary for



" the Safety and Honour of this Kingdom, and  
" the Preservation of the Peace of Europe.

Then the Managers went to the Conference, and being returned, Colonel *Granville* reported, That they had attended the Conference, and offered what the House had directed.

*Martis 8 die Aprilis, 1701.*

*Resolved*, That an humble Address be presented to His Majesty, That he will please to give Order, That the Grand Alliance of One thousand six hundred eighty-nine, with the two Secret Articles, may be laid before this House.

*Resolved*, That an humble Address be presented to His Majesty, That he will please to give Order, That the Treaty made in the Year One thousand six hundred ninety-eight, with relation to the Electoral Prince of *Bavaria's* having Part of the Territories of the Crown of *Spain*, may be laid before this House.

*Resolved*, That an humble Address be presented to His Majesty, That he will please to give Order, That the Powers and Instructions for making the late Treaties may be laid before this House.

*Ordered*, That the said Addresses be presented to His Majesty by such Members of this House as are of His Majesty's most Honourable Privy-Council.

*Mercurii 9 die Aprilis, 1701.*

Mr. Secretary *Vernon* acquainted the House, That their Address having been presented to His Majesty, That His Majesty would be pleased to give Order, that the Grand Alliance of One thousand six hundred eighty-nine, and the Treaty of One thousand six hundred ninety-eight, and also the Powers and Instructions for making the late Treaties, might be laid before this House; His Majesty had been pleased to give Order for the Treaties and Powers to be laid before this House; but that there were no Instructions for either of those Treaties in Writing.

*A Message from the Lords by Sir Richard Holford, and Mr. Pitt.*

Mr. Speaker,

" The Lords do desire a Conference with this  
" House to Morrow at One a Clock in the  
" Painted Chamber, upon the Subject-Matter of  
" the last Conference.

To which the House agreed: And the Messengers were called in, and Mr. Speaker acquainted them therewith.

*Jovis 10 die Aprilis, 1701.*

*Ordered*, That the Members who managed the last Conference with the Lords, do manage the Conference this Day.

And the Managers went to the Conference, and being returned, Colonel *Granville* reported, That the Managers appointed had attended the Conference; That on the Part of the Lords, the Lord Marquis of *Normanby* managed the Conference, and acquainted them, That the Lords had ordered to be laid before this House Two Powers, and also a Paper, which (although not sign'd by the Earl of *Portland*,) yet was laid before the

Lords by him, and that there being some Questions asked him by the Lords, there were his Answers also; which Powers and Paper Colonel *Granville* read in his Place, and afterwards delivered in at the Clerk's Table, where the same were read, and are as follow, viz.

GULIELMUS R.

GULIELMUS Tertius Dei Gratiâ Magnæ Britanniae, Franciae, & Hiberniae Rex, Fidei Defensor, &c. Omnibus ad quos praesentes Literae pervenerint Salutem. Quum ad conservandam universae Europae Quietem plurimum conducere arbitramur, ut de efficacissimis Mediis quibus reintegratae Pacis Beneficia confirmari ac conservari possint sedulo & opportunè provideatur, neq; ullum Publicae Tranquillitati immutandae periculum evidentius imminere, quam si eveniat ut Rex Catholicus, nullam Sobolem superstitem relinquens, moriatur, (illum vero Regem diu superesse exoptamus) ac proinde Principes, illam Successionem non tam jure quam viribus vindicantes, crudelissimum Bellum per tot florentia Regna, Provincias, Ditionesq; excitent; quumq; Nobis spes maxima elucescat, haec Bella averti posse, atq; omnia amicè & feliciter componi, si de cujusq; Rationibus & Commodis in medium providè consuleretur: Quum Nobis deniq; innotescat, Serenissimum Principem & Dominum Dominum Ludovicum Decimum Quartum, Regem Christianissimum, ac Praepotentes Dominos Dominos Ordines Generales Foederatarum Belgii Provinciarum, in eodem prorsus Animo esse. Sciat igitur, Quod Nos fide prudentia ac in Rebus gerendis usu perfideli & perquam dilecti Consanguinei & Consilarii nostri Gulielmi Comitum Portlandiae, Vicecomitis de Cirencester, Baronis de Woodstock, Ordinis Nostri Periscelidis Equitis; necnon perfideli & perquam dilecti Consanguinei & Consilarii Nostri Edwardi Comitum Jersey, unius Primariorum Secretariorum Nostrorum Status; plurimum confisi, eosdem fecimus, ordinavimus & deputavimus, ac per Praesentes facimus, ordinamus & deputamus veros & indubitatos Commissarios & Plenipotentarios Nostros, dantes & concedentes iisdem aut eorum alteri plenam & omnimodam Potestatem atq; Autoritatem, pariter & Mandatum generale & speciale, ut pro Nobis & Nostro Nomine, cum praefatorum Serenissimi Regis Christianissimi, ac Dominorum Ordinum Generalium Foederatarum Belgii Provinciarum Commissario ac Plenipotentario, five Commissariis ac Plenipotentariis, de & super Praemissis convenient, colloquantur & tractent, eaq; omnia perficiant & concludant, quae ad Bella de Successione Hispanica avertenda, stabilendamq; Europae Pacem omni meliori modo faciant & conducant; Promittentes bona fide & in Verbo Regio, Nos omnia & singula quae à dictis Commissariis ac Plenipotentariis Nostriis, vel eorum altero, vi Praesentium conclusa fuerint, grata, rata & firma habituros, nec contra eorum aliquid contraventuros, sed eadem sanctè & inviolabiliter observaturos. In quorum omnium majorem Fidem ac Robur, hasce Literas Manu Nostri Regi signatas, Magno Nostro Angliae Sigillo muniri fecimus: Quae dabantur in Palatio Nostro apud Kensington Die Secundo Mensis Januarii, Anno Domini 1701 Regniq; Nostri Undecimo.

GULIELMUS

GULIELMUS R.

**G**ULIELMUS Tertius Dei Gratiâ Magnæ Britanniae, Franciae & Hiberniae Rex, Fidei Defensor, &c. Omnibus & singulis ad quos praesentes Literae pervenerint Salutem. Quum ad conservandam Quietem Publicam plurimum conducere arbitramur, ut de efficacissimis Mediis quibus redintegratae Pacis Beneficia confirmari & augeri possint sedulo & opportunè provideatur: Quumq; Nobis innotescat Serenissimum Principem & Dominum Dominum Leopoldum Romanorum Imperatorem, tum Serenissimum Principem & Dominum Dominum Ludovicum Decimum Quartum Regem Christianissimum, ac Praepotentes Dominos Dominos Ordines Generales Foederatarum Belgii Provinciarum, in eo Animo esse, ut Consilia sua Nobiscum invicem communicare, & de iis quae ad mutuam Amicitiam firmitus astringendam, quaeq; praesentis temporis Rationibus maximè accommodata sint in commune consulere velint. Sciatis igitur, Quod Nos fide prudentiâ & in Rebus gerendis usu per dilecti & perquam fidelis Consanguinei & Consilarii Nostri Gulielmi Comitis de Portland, Ordinis Nostri Periscelidis Equitis; ac Consilarii Nostri Edwardi Comitis de Jersey, unius Primariorum Secretariorum Nostrorum Status, plurimum confisi, eosdem fecimus, ordinavimus ac deputavimus, sicut per Praesentes facimus, ordinamus & deputamus, veros & indubitatos Commissarios & Deputatos Nostros, dantes & concedentes iisdem Commissariis & Deputatis Nostris, aut eorum alteri, plenam & omnimodam Potestatem atq; Auctoritatem, pariter & Mandatum generale ac speciale, ut pro Nobis & Nostro Nomine, cum praefatorum Serenissimi Romanorum Imperatoris, Serenissimi Regis Christianissimi, ac Dominorum Ordinum Generalium Foederatarum Belgii Provinciarum Commissariis ac Deputatis, plenâ etiam Potestate munitis, de & super Praemissis conveniant, colloquantur & tractent, eaq; omnia perficiant & concludant quae ad praedictum finem omni meliori modo faciant & conducant: Promittentes bonâ fide & in Verbo Regio, Nos omnia & singula quae à dictis Commissariis Nostris, aut ab eorum altero, vi Praesentium conclusa fuerint, grata, rata & firma habituros, nec contra eorum aliquid contraveniunt aut contraveniri passuros. In quorum omnium majorem Fidem ac Robur, haec Literas Manu Nostâ Regiâ signatas, Magno Nostro Angliæ Sigillo muniri fecimus: Quae dabantur in Palatio Nostro apud Loo, Primo Die Mensis Julii, Anno Domini Millesimo sexcentesimo nonagesimo nono, Regniq; Nostri Undecimo.

*The Lord Portland's Paper is as follows, viz.*

“ **A**T the Beginning of the Summer of the Year 99, when I was in *Holland* at my Country House, and when the King would have me be concern'd in the Negotiating of this Treaty with the Emperor, the French King, and the States; being very unwilling to meddle with Business again, from which I was retired, before I would engage myself, I advised with my Friends in *Holland*, and writ into *England* to Mr. Secretary *Vernon*, as my particular Friend, Whether it was adviseable for me to engage in any Business again? To which Mr. *Vernon* answer'd in Substance, That this would not engage me but for a little while;

“ that I being upon the Place, and generally acquainted with the Foreign Ministers, it would be easier for the King, and properer for me to be employ'd in it than any body else, that must be otherwise sent for on purpose.

The Earl of *Portland* being desired by the Lord *Somers*, with the Leave of the House, to declare if he pleased, Whether the Lord *Somers's* Name was mentioned in the Letter he received from Mr. Secretary *Vernon*;

The Earl of *Portland* declared, That if he had remember'd any such thing in the Letter, and had not inserted it in the Paper which he had delivered to the House, he should have thought he had deceived the House.

*Ordered*, That the Consideration of the said Report be adjourned till to Morrow Morning.

*Veneris 11 die Aprilis, 1701.*

Mr. Secretary *Vernon* presented to the House (pursuant to their Address to His Majesty) several Treaties and Translations of them, and of the Powers for them, and a Schedule of them; And the Schedule was read.

Mr. Secretary *Hedges* presented to the House (pursuant to their Address to His Majesty) the Translation of the Treaty between the Emperor and the States General, called the Grand Alliance, with the Separate Articles, dated *May 12, 1689*, and acquainted the House, That he had the Original in his Custody for the Service of the House. The Title of the said Treaty was read.

Then the Report of the Conference with the Lords Yesterday was read.

*Ordered*, That Mr. Secretary *Vernon* do lay before this House all the Letters and Copies of Letters which have passed between himself and the Earl of *Portland* in the Years 1698, 1699, or at any other Time, with relation to any Treaty concerning the Partition of the *Spanish* Dominions.

*Ordered*, That the said Letters and Copies of Letters be laid before this House to Morrow Morning.

*Sabbati 12 die Aprilis, 1701.*

Mr. Secretary *Vernon* (according to Order) presented to the House the Letters and Copies of Letters between him and the Earl of *Portland*, relating to the Treaty of Partition, with a List of them;

And the List was read.

*Ordered*, That a Committee be appointed to translate the said Letters, and report the same to the House; and a Committee was appointed accordingly, and they are to sit *de die in diem*.

*Lune 14 die Aprilis, 1701.*

Sir *Godfrey Copley* reported from the Committee appointed to translate the Letters between Mr. Secretary *Vernon* and the Earl of *Portland*, relating to the Treaty for the Partition of the *Spanish* Dominions, That they had translated them accordingly, and he delivered them in at the Clerk's Table, where the same, and the Copies of the Letters sent by Mr. Secretary *Vernon* to the Earl of *Portland*, were read, (all of them dated in the Year 1698.)

And the Treaty in the Year 1698, with the Secret and Separate Articles: And also

The



The Treaty called the Grand Alliance, with the Separate Articles, dated May 12, 1689, were read.

*Ordered*, That the Serjeant do go with the Mace into *Westminster-Hall*, and the Court of Requests, and Places adjacent, and summon the Members there to attend the Service of the House immediately.

And he went accordingly;

And being returned;

And a Debate being in the House touching the Lord Somers:

The House was informed, That the Lord Somers had heard, that the House was upon a Debate concerning him, and that he desired he might be admitted in, and heard.

*Resolved*, That the Lord Somers be admitted in, and heard.

*Ordered*, That Candles be brought in;

And Candles were brought in accordingly.

Then a Chair was set by the Serjeant, a little within the Bar on the left Hand coming in; and the Serjeant had Directions to acquaint the Lord Somers, That he might come in; and the Door being open'd, his Lordship came in, and Mr. Speaker acquainted his Lordship, That he might repose himself in a Chair provided for him; and his Lordship was heard what he had to offer to the House: And after his Lordship withdrew, the House came to this Resolution;

*Resolved*, That John Lord Somers, by advising His Majesty in the Year One thousand six hundred ninety-eight to the Treaty for Partition of the Spanish Monarchy, whereby large Territories of the King of Spain's Dominions were to be delivered up to France, is guilty of a High Crime and Misdemeanour.

*Resolved*, That John Lord Somers be impeach'd of High Crimes and Misdemeanours.

*Ordered*, That Mr. Harcourt do go up to the Lords, and at their Bar, in the Name of the House of Commons, and of all the Commons of England, impeach John Lord Somers of High Crimes and Misdemeanours; and acquaint them, That this House will, in due Time, exhibit particular Articles against him, and make good the same.

*Resolved*, That Edward Earl of Orford, by advising His Majesty in the Year One thousand six hundred ninety-eight to the Treaty of Partition of the Spanish Monarchy, whereby large Territories of the King of Spain's Dominions were to be delivered up to France, is guilty of a High Crime and Misdemeanour.

*Resolved*, That Edward Earl of Orford be impeached of High Crimes and Misdemeanours.

*Ordered*, That Colonel Byerly do go up to the Lords, and at their Bar, in the Name of the House of Commons, and of all the Commons of England, impeach Edward Earl of Orford of High Crimes and Misdemeanours; and acquaint them, That this House will, in due Time, exhibit particular Articles against him, and make good the same.

*Resolved*, That Charles Lord Halifax, by advising His Majesty in the Year One thousand six hundred ninety-eight to the Treaty of Partition of the Spanish Monarchy, whereby large Territories of the King of Spain's Dominions were to be deliver'd up to France, is guilty of a High Crime and Misdemeanour.

*Resolved*, That Charles Lord Halifax be impeached of High Crimes and Misdemeanours.

*Ordered*, That Mr. Bruges do go to the Lords, and at their Bar, in the Name of the House of Commons, and of all the Commons of England, impeach Charles Lord Halifax of High Crimes and Misdemeanours; and acquaint them, That this House will, in due Time, exhibit particular Articles against him, and make good the same.

*Martis 15 die Aprilis, 1701.*

Mr. Harcourt reported, That he had (according to Order) been at the Lords, and in the Name of this House, and of all the Commons of England, impeached John Lord Somers of High Crimes and Misdemeanours; and acquainted the Lords, That this House will, in due Time, exhibit particular Articles against him, and make good the same.

Colonel Byerly reported, That he had (according to Order) been at the Lords, and impeached Edward Earl of Orford of High Crimes and Misdemeanours; and acquainted the Lords, That this House will, in due Time, exhibit particular Articles against him, and make good the same.

Mr. Bruges reported, That he had (according to Order) been at the Lords; and impeached Charles Lord Halifax of High Crimes and Misdemeanours; and acquainted the Lords, That this House will, in due Time, exhibit particular Articles against him, and make good the same.

*Ordered*, That it be referred to the Committee (appointed to draw up Articles of Impeachment against William Earl of Portland) to draw up Articles of Impeachment also against the said John Lord Somers, Edward Earl of Orford, and Charles Lord Halifax; and that they do sit *de die in diem*.

*Ordered*, That the Letters, and Copies of the Letters presented to the House by Mr. Secretary Vernon, relating to the Partition Treaty, and the Translation of the said Letters, be referred to the Consideration of the said Committee.

A Copy of the Letter from the Lord Somers to His Majesty (which his Lordship delivered in to the House yesterday) dated the twenty-eighth of August, One thousand six hundred ninety-eight, was read.

*Ordered*, That the said Copy of the said Letter be referred to the Consideration of the said Committee.

*Ordered*, That Mr. Bruges and Mr. How do withdraw into the Speaker's Chamber, and translate a Letter from His Majesty to the Lord Somers, dated August  $\frac{1}{2}$ , One thousand six hundred ninety-eight, which his Lordship also yesterday delivered in to the House, and report the same to the House.

*Resolved*, That an humble Address be presented to His Majesty, That he will be pleased to remove John Lord Somers from his Council and Presence for ever.

*Resolved*, That an humble Address be presented to His Majesty, That he will be pleased to remove Edward Earl of Orford from his Council and Presence for ever.

*Resolved*, That an humble Address be presented to His Majesty, That he will be pleased to remove Charles Lord Halifax from his Council and Presence for ever.

*Resolved*, That an humble Address be presented to His Majesty, That he will be pleased to remove William Earl of Portland from his Council and Presence for ever.

*Resolved*,

*Resolved*, That an Address be drawn up upon the said Resolutions, and upon the Debate of the House, to be presented to His Majesty.

*Ordered*, That it be referred to the Committee (who are to draw up the Articles of Impeachment) to draw up the said Address.

*Resolved*, That the said Address be presented to His Majesty by the whole House.

Mr. *Bruges* reported, That he and Mr. *How* had (according to Order) translated the Letter from His Majesty to the Lord *Somers*; and he delivered the same in at the Clerk's Table, where the said Translation was read.

*Ordered*, That the said Letter and Translation be referred to the Consideration of the said Committee.

*Mercurii 16 die Aprilis, 1701.*

Mr. *Bromley* reported from the Committee, to whom it was referred to draw up an Address upon the Resolutions yesterday, and upon the Debate of the House to be presented to His Majesty, That they had drawn up an Address accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and (with an Amendment) agreed unto by the said House, and is as follows; viz.

*The Humble Address of the House of Commons to the KING.*

*Most Gracious Sovereign,*

WE Your Majesty's most dutiful and loyal Subjects, the Commons in Parliament assembled, do humbly crave Leave to represent to Your Majesty the great Satisfaction we have from our late Enquiry concerning the Treaty of Partition made in the Year One thousand six hundred ninety-eight (on which the Treaty in One thousand six hundred ninety-nine was founded) to see Your Majesty's great Care of Your People and this Nation, in not entering into that Negotiation without the Advice of Your *English* Councillors: And finding that *John* Lord *Somers* (on whose Judgment Your Majesty did chiefly rely in that so important Affair) did, in Concert with *Edward* Earl of *Orford*, and *Charles* Lord *Halsifax*, advise Your Majesty to enter into that Treaty of so dangerous Consequence to the Trade and Welfare of this Nation; and who, to avoid the Censure which might justly be apprehended to fall on those who advised the same, endeavoured to insinuate, That Your Majesty, without the Advice of Your Council, entered into that Treaty, and under Your Sacred Name to seek Protection for what themselves had so advised; of which Treatment of Your Majesty we cannot but have a just Resentment. And that they may be no longer able to deceive Your Majesty, and abuse Your People, we do humbly beseech Your Majesty, That You will be pleased to remove *John* Lord *Somers*, *Edward* Earl of *Orford*, and *Charles* Lord *Halsifax*, from Your Council and Prefence for ever; as also *William* Earl of *Portland*, who transacted those Treaties, so unjust in their own Nature, and so fatal in

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their Consequences to this Nation, and the Peace of *Europe*. And we humbly crave Leave, upon this Occasion, to repeat our Assurances to Your Majesty, That we will always stand by and support Your Majesty to the utmost of our Power, against all Your Enemies both at home and abroad.

*Ordered*, That such Members of this House as are of His Majesty's most Honourable Privy-Council, do humbly know His Majesty's Pleasure, when He will be attended by this House.

*Mercurii 23 die Aprilis, 1701.*

Mr. Secretary *Hedges* acquainted the House, That His Majesty had been pleased to appoint to be attended by this House this Afternoon at Five o'Clock at *Kensington*.

*Jovis 24 die Aprilis, 1701.*

Mr. Speaker reported, That he with the House did yesterday present to His Majesty their humble Address; and that His Majesty was pleased to give a most Gracious Answer thereunto as follows; viz.

*Gentlemen,*

I Am willing to take all Occasions of thanking you very heartily for the Assurances you have frequently given Me, and now repeat, of standing by and supporting Me against all Our Enemies, both at home and abroad; towards which nothing, in My Opinion, can contribute so much, as a good Correspondence between Me and My People; and therefore you may depend upon it, that I will employ none in My Service, but such as shall be thought most likely to improve that mutual Trust and Confidence between Us, which is so necessary in this Conjunction, both for Our own Security, and the Defence and Preservation of Our Allies.

*Resolved, Nemine contradicente;*

That the humble Thanks of this House be given to His Majesty, for His Majesty's most Gracious Answer to the said Address.

*Ordered*, That such Members of this House as are of His Majesty's most Honourable Privy-Council, do give His Majesty the said humble Thanks of this House.

*Martis 29 die Aprilis, 1701.*

Mr. Secretary *Hedges* reported to the House, That their Thanks for His Majesty's most Gracious Answer to their Address had been presented to His Majesty; and that His Majesty received the same very graciously.

*Lune 5 die Maii, 1701.*

A Message from the Lords by Sir *Robert* *Leigard* and Sir *Richard* *Holford*.

*Mr. Speaker,*

The Lords have commanded us to acquaint this House, That they having on the first Day of April last sent up to their Lordships an Impeachment against *William* Earl of *Portland*,



" of high Crimes and Misdemeanours; and having also on the fifteenth Day of the same Month severally impeached *John Lord Somers, Edward Earl of Orford, and Charles Lord Halifax*, of high Crimes and Misdemeanours; their Lordships think themselves obliged to put this House in mind, That as yet no particular Articles have been exhibited against the said Lords; which, after Impeachments have been so long depending, is due in Justice to the Persons concerned, and agreeable to the Methods of Parliament in such Cases.

*Resolved*, That an Answer be returned to the Lords, That the Articles against the Lords impeached are preparing, and in a short time this House will send them up to the House of Lords.

And the Messengers were called in again, and Mr. Speaker acquainted them therewith.

*Mercurii 7 die Maii, 1701.*

Sir *Bartolomew Shower* acquainted the House, from the Committee appointed to draw up the Articles of Impeachment against the Lords impeached, That they had drawn up Articles of Impeachment accordingly against the Earl of Orford.

*Ordered*, That the said Articles be reported to Morrow Morning.

*Jovis 8 die Maii, 1701.*

Sir *Bartolomew Shower* (according to Order) reported, from the Committee to whom it was referred to draw up Articles of Impeachment against the Lords impeached, the Articles of Impeachment against *Edward Earl of Orford*, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same were once read.

*Resolved*, That the said Articles be read a second time, Article by Article: And the same were severally read a second time; and upon the Question severally put thereupon, agreed unto by the House to be the Articles of Impeachment against the Earl of Orford: And are as follow; viz.

*Articles exhibited by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of England, againſt Edward Earl of Orford, in maintenance of their Impeachment againſt him for High Crimes and Misdemeanours.*

[These Articles being printed in the *Proceedings of the Lords*, Vol. 5. Pag. 340 to 344, are not here inserted.]

*Ordered*, That the said Articles of Impeachment be engrossed.

*Resolved*, That such Witnesses as are necessary to be made use of in relation to the said Impeachment, have the Protection of this House during their Attendance upon that Service.

*Veneris 9 die Maii, 1701.*

The engrossed Articles of Impeachment against *Edward Earl of Orford* were read.

*Ordered*, That the said Articles of Impeachment be carried up to the Lords.

*Ordered*, That Colonel *Byerly* do carry the said Articles of Impeachment to the Lords; and that he do also demand, That the Earl of Orford do give sufficient Security to abide the Judgment of the House of Lords.

Colonel *Byerly* reported, That he had (according to Order) carried up to the Lords the Articles of Impeachment against the Earl of Orford; and had demanded, That the said Earl do give sufficient Security to abide the Judgment of the House of Lords.

*Martis 13 die Maii, 1701.*

*Resolved*, That a further humble Address be presented to His Majesty, That He will be graciously pleased effectually to answer the Address of this House for removing *John Lord Somers, Edward Earl of Orford, Charles Lord Halifax, and William Earl of Portland*, from His Council and Presence for ever.

*Ordered*, That the said Address be presented to His Majesty, by such Members of this House as are of His Majesty's most Honourable Privy-Council.

*Jovis 15 die Maii, 1701.*

A Message from the Lords by Sir *Richard Holford* and Mr. *Pitt*.

Mr. Speaker, We are commanded by the Lords to deliver to this House the Answer of *Edward Earl of Orford*, to the Articles exhibited against him by the Knights, Citizens, and Burgeſſes in Parliament assembled, in the Name of themselves, and of all the Commons of England, in maintenance of their Impeachment against the said Earl for high Crimes and Misdemeanours, supposed to be committed by him: And they delivered the same accordingly.

*Ordered*, That the said Answer be read to Morrow Morning.

A Message from the Lords by Sir *Richard Holford* and Mr. *Pitt*.

Mr. Speaker, The Lords have commanded us to acquaint this House, That on the first Day of April last, this House having sent up to their Lordships an Impeachment against *William Earl of Portland*, for high Crimes and Misdemeanours; and having also on the fifteenth Day of the same Month severally impeached *John Lord Somers, and Charles Lord Halifax*, of high Crimes and Misdemeanours; their Lordships think themselves obliged to put this House in mind, That as yet no particular Articles have been exhibited against the said Lords; which, after Impeachments have been so long depending, is due in Justice to the Persons concerned, and agreeable to the Methods of Parliament in such Cases.

*Resolved*, That an Answer be returned to the Lords, That the Articles against *William Earl of Portland, John Lord Somers, and Charles Lord Halifax*, are preparing, and in a short time this House will send them up to the House of Lords.

And the Messengers were called in again, and Mr. Speaker acquainted them therewith.

*Veneris 16 die Maii, 1701.*

The Answer of *Edward Earl of Orford*, to the Articles of Impeachment against him, was (according to Order) read, and is as follows; viz.

*The*

*The Answer of Edward Earl of Orford, to the Articles exhibited against him by the Knights, Citizens, and Burgesſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of England, in maintenance of their Impeachment againſt the ſaid Earl for high Crimes and Miſdemeanours, ſuppoſed to be committed by him.*

[This Answer being in the *Lords Proceedings*, Vol. 5. Pag. 340—344, is here omitted.]

*Ordered*, That the ſaid Answer be referred to the Committee appointed to draw up the Articles of Impeachment.

*Ordered*, That the ſaid Committee do prepare a Replication to the ſaid Answer; and that the ſaid Committee do ſit *de die in diem*.

Mr. *Harcourt* reported from the Committee appointed to draw up Articles of Impeachment, That they had drawn up Articles accordingly againſt John Lord Somers, Baron of *Evelham*, in maintenance of the Impeachment againſt him for high Crimes and Miſdemeanours: And he read the ſame in his Place, and afterwards delivered them in at the Clerk's Table; where they were read, Article by Article, and upon the Queſtion ſeverally put thereupon, agreed unto by the Houſe to be Articles of Impeachment of high Crimes and Miſdemeanours againſt the ſaid Lord Somers; and are as follow; viz.

*Articles exhibited by the Knights, Citizens, and Burgesſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of England, againſt John Lord Somers, Baron of Evelham, in maintenance of their Impeachment againſt him for high Crimes and Miſdemeanours.*

[Theſe Articles being in the *Lords Proceedings*, Vol. 5. Pag. 345 to 356, are here omitted.]

*Lunæ 19 die Maii, 1701.*

The engroſſed Articles of Impeachment againſt John Lord Somers were read, and ſome Amendments were made by the Houſe to one of them.

*Ordered*, That Mr. *Harcourt* do carry the ſaid Articles up to the Lords.

*Ordered*, That Mr. *Harcourt* do alſo pray and demand; That the ſaid John Lord Somers do give ſufficient Security to abide the Judgment of the Houſe of Lords.

Mr. *Harcourt* reported, That he had (according to Order) carried up to the Lords the Articles of Impeachment againſt John Lord Somers, and prayed and demanded that the ſaid John Lord Somers do give ſufficient Security to abide the Judgment of the Houſe of Lords thereupon.

*Mercurii 21 die Maii, 1701.*

A Meſſage from the Lords by Sir *Robert Legard* and Mr. *Gery*.

Mr. Speaker, The Lords command us to acquaint this Houſe, That their Lordſhips having been deſired by the Earl of *Orford*, that a Day may be appointed for his ſpeedy Trial, their Lordſhips finding no Iſſue joined by Replication of this Houſe, think fit to give Notice thereof to this Houſe.

They alſo command us to acquaint this Houſe, That they having on the firſt Day of *April* laſt

ſent up to their Lordſhips an Impeachment againſt William Earl of *Portland*, for high Crimes and Miſdemeanours; and having alſo on the fifteenth Day of the ſame Month impeached Charles Lord *Halifax*, for high Crimes and Miſdemeanours; and there being as yet no particular Articles exhibited againſt the ſaid Lords; their Lordſhips think themſelves obliged to put this Houſe in mind thereof; which, after Impeachments have ſo long depended, is a Hardſhip to the Perſons concerned, and not agreeable to the uſual Methods and Proceedings of Parliament in ſuch Caſes.

*Reſolved*, That this Houſe will ſend an Answer to the ſaid Meſſages relating to the ſaid Impeachments by Meſſengers of their own.

And the Meſſengers were called in, and Mr. Speaker acquainted them therewith.

*Veneris 23 die Maii, 1701.*

Sir *Bartholomew Shower* reported from the Committee appointed to draw up the Articles of Impeachment, That they had conſidered of the Answer of Edward Earl of *Orford*, and had drawn up a Replication thereunto, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the ſame was read, and (with an Amendment) agreed unto by the Houſe: And is as followeth; viz.

*The Commons have conſidered the Answer of Edward Earl of Orford, to the Articles of Impeachment exhibited againſt him by the Knights, Citizens, and Burgesſes aſſembled in Parliament; and do aver their Charge of high Crimes and Miſdemeanours againſt him to be true, and that the ſaid Earl is guilty in ſuch manner as he ſtands accuſed and impeached; and that the Commons will be ready to prove their Charge againſt him, at ſuch convenient Time as ſhall be appointed for that Purpoſe.*

*Ordered*, That the ſaid Replication be engroſſed.

Sir *Bartholomew Shower* alſo reported from the ſaid Committee, That they had directed him to move, that they may have Power to ſend for Perſons, Papers, and Records, that ſhall be thought neceſſary to be uſed at the Trial of the ſaid Earl; and to proceed in the moſt ſpeedy and ſecret Way they can for the Advantage of the Proſecution.

*Ordered*, That the ſaid Committee have Power to ſend for Perſons, Papers, and Records, that ſhall be thought neceſſary to be uſed at the Trial of the ſaid Earl; and to proceed in the moſt ſpeedy and ſecret Way they can for the Advantage of the Proſecution.

*Ordered*, That the ſaid Committee have Power to ſend ſome of their Number to examine Mr. *Samuel Shepherd* in the Tower.

*Ordered*, That the ſaid Committee do conſider of the Meſſages from the Lords relating to the Impeachments, and inſpect the Precedents of Meſſages in relation to former Impeachments, and report the ſame to the Houſe.

*Sabbati 24 die Maii, 1701.*

A Meſſage from the Lords by Sir *John Hoſkins* and Sir *Robert Legard*.

Mr.



Mr. Speaker, The Lords have commanded us to deliver to this House a Copy of the Answer of *John Lord Somers*, Baron of *Evesham*, to the Articles exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of *England*, in maintenance of their Impeachment against him for high Crimes and Misdemeanours, supposed to be by him committed; and they delivered the same in accordingly.

*Lune 26 die Maii, 1701.*

Ordered, That the Answer of the Lord *Somers* to the Articles of Impeachment exhibited against him, be read to Morrow Morning at Eleven o'Clock.

*Martis 27 die Maii, 1701.*

The Answer of the Lord *Somers* to the Articles of Impeachment exhibited against him was, according to Order, read, and is as follows; viz.

*The Answer of John Lord Somers, Baron of Evesham, to the Articles exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of England, in maintenance of their Impeachment against him for high Crimes and Misdemeanours supposed by him to be committed.*

[This Answer being in Vol. 5. P. 345, & seq. is here omitted.]

Ordered, That the said Answer be referred to the Committee appointed to draw up the Articles of Impeachment.

Ordered, That it be referred to the said Committee to prepare a Replication thereunto.

The engrossed Replication to the Answer of the Earl of *Orford* to the Articles of Impeachment exhibited against him, was read.

*Sabbati 31 die Maii, 1701.*

Mr. *Bromley* reported from the Committee to whom it was referred to draw up the Articles of Impeachment, and who were to consider of the Messages from the Lords relating to the Impeachments, and inspect the Precedents of Messages in relation to former Impeachments, and report the same to the House, That they had considered the said Messages, and inspected the Precedents; and that they had drawn up an Answer to the Message from the Lords the twenty-first instant, and had directed him to report the same to the House; which he read in his Place, and afterwards delivered in at the Table; where the same was read, and is as followeth; viz.

In Answer to your Lordships Message of the twenty-first instant, the Commons have prepared a Replication to the Earl of *Orford's* Answer to the Articles of Impeachment of high Crimes and Misdemeanours, exhibited against him, and at present defer bringing it up to your Lordships, because in the Trial of the several Impeachments now depending, the Commons think it most proper, from the Nature of the Evidence that will be given at the said Trials, to begin with the Trial of the Impeachment of *John Lord Somers* of high Crimes and Misdemeanours.

As to your Lordships other Message, the Commons take it to be without Precedent, and un-

parliamentary; they, as Prosecutors, having a Liberty to exhibit their Articles of Impeachment in due time, of which they, who are to prepare them, are the proper Judges; and therefore, for your Lordships to assert, That having not yet exhibited particular Articles against *William Earl of Portland*, and *Charles Lord Halifax*, is a Hardship to them, and not agreeable to the usual Methods and Proceedings in Parliament in such Cases, does, as they conceive, tend to the Breach of that good Correspondence betwixt the Two Houses, which ought to be mutually preserved.

Resolved, That the House doth agree, That the said Answer be returned to the Lords, to their Lordships said Messages.

Ordered, That Mr. *Bromley* do carry the said Answer to the Lords.

Sir *Bartholomew Shower* also reported from the said Committee, That they had drawn up a Replication to the Answer of the Lord *Somers* to the Articles of Impeachment exhibited against him, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read and agreed unto by the House: And is as follows; viz.

The Commons have considered the Answer of *John Lord Somers* to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burgesses assembled in Parliament, for high Crimes and Misdemeanours. The said Commons do aver their Charge against the said Lord *Somers* to be true; and do say, that he is guilty in the Manner as he stands accused and impeached; and the said Commons will be ready to prove the same at such convenient Time as shall be appointed for that Purpose.

Ordered, That the said Replication be engrossed.

A Message from the Lords by Sir *John Hoskins* and Sir *Robert Legard*.

Mr. Speaker, The Lords have commanded us to acquaint this House, That their Lordships have appointed *Monday* the ninth Day of *June* next, for the Trial of *Edward Earl of Orford*, upon the Articles brought up against him by this House, in *Westminster-Hall*; and that this House may reply, if they think fit.

They also have commanded us to acquaint this House, That this House having, on the first Day of *April* last, sent up to their Lordships an Impeachment against *William Earl of Portland*, for high Crimes and Misdemeanours; and having also, on the fifteenth Day of the same Month, impeached *Charles Lord Halifax* for high Crimes and Misdemeanours; and there being as yet no particular Articles exhibited against the said Lords, their Lordships think themselves obliged to put this House in mind thereof; which, after Impeachments have so long depended, is a Hardship to the Persons concerned, and not agreeable to the usual Methods of Parliament in such Cases.

Resolved, That an Answer be returned to the said Message, relating to the appointing a Time for the Trial of the Earl of *Orford*, and to the Articles of Impeachment against the Earl of *Portland*, and Lord *Halifax*; and this House will return an Answer by Messengers of their own. And the Messengers were called in again, and Mr. Speaker acquainted them therewith.

Resolved,

*Resolved*, That a Committee be appointed to consider of the said Messages, and to search Precedents in relation thereunto, and to draw up an Answer to be returned to the Lords, and a Committee was accordingly appointed, and they to sit *de die in diem*.

*Mercurii 4 die Junii, 1701.*

A Message from the Lords by Sir Richard Holford and Mr. Pitt.

Mr. Speaker, The Lords do think fit, upon Occasion of the Message from this House of the thirty-first of May, to acquaint this House, That having been desired by the Lord Somers, that a Day may be appointed for his speedy Trial; and their Lordships finding no Issue joined, by Replication of the House of Commons, judge it proper to give them Notice thereof, that the Commons may reply, if they think fit; and at the same time their Lordships let the Commons know, That they will proceed to the Trial of any of the impeached Lords, whom the Commons shall be ready first to begin with, so as there may be no Occasion taken from thence for any unreasonable Delay in the Prosecution of any of them: And further to acquaint them, That having searched their own Journals, they do not find that after a general Impeachment there has ever been so long a Delay of bringing up the particular Articles of Impeachment, fitting the Parliament: And therefore the Lords do think they had Reason to assert, That it was a Hardship to the two Lords concerned (especially after their Lordships had put the House of Commons in mind of exhibiting such Articles) and not agreeable to the usual Proceedings in Parliament; and as the Lords do not controvert what Right the Commons may have of impeaching in general Terms, if they please; so the Lords, in whom the Judicature does intirely reside, think themselves obliged to assert, That the Right of limiting a convenient Time for bringing the particular Charge before them, for the avoiding Delay in Justice, is lodged in them.

The Lords hope the Commons on their Part will be as careful not to do any thing that may tend to the Interruption of the good Correspondence between the Two Houses, as the Lords shall ever be on their Part; and the best way to preserve that is, for neither of the Two Houses to exceed those Limits which the Law and Custom of Parliament have already established.

Mr. Harcourt, according to Order, reported from the Committee, who were appointed to consider of the Message from the Lords of Saturday last, and search Precedents in relation thereunto, and prepare an Answer to the said Message, That they had considered the said Message, and searched Precedents, and had drawn up an Answer accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and, with some Amendments, agreed unto by the House, and is as followeth; *viz.*

The Commons, on Consideration of your Lordships Message to them of the thirty-first of May, concerning the Earl of Orford, think it their undoubted Right, when several Persons stand impeached before your Lordships, to bring

to Trial such of them in the first Place as the Commons apprehend, from the Nature of the Evidence, ought first to be proceeded against, to the Intent all such Offenders may in due time be brought to Justice; and that no Day ought to be appointed by your Lordships for the Trial of any Impeachment by the Commons, without some previous Signification to your Lordships from the Commons, of their being ready to proceed thereon.

The Commons could not receive this Message from your Lordships without the greatest Surprise; your Lordships Proceedings in this Case being neither warranted by Precedents, nor (as the Commons conceive) consistent with the Methods of Justice, or with Reason: Wherefore the Commons cannot agree to the Day appointed by your Lordships for the Trial of the Earl of Orford.

As to your Lordships Message at the same time, relating to the Earl of Portland and Charles Lord Halifax, the Commons take the same to be without Precedent, and unparliamentary; and conceive your Lordships frequent Repetition thereof in so short a Time after the Commons had transmitted to your Lordships their Articles against two of the impeached Lords, and were daily preparing their Articles against the others, manifestly tends to the Delay of Justice, in obstructing the Trials of the impeached Lords, by introducing Disputes in Breach of that good Correspondence between the Two Houses, which ought inviolably to be preserved.

*Ordered*, That Mr. Harcourt do carry the said Answer to the Lords.

A Motion being made, and the Question being put, That the engrossed Replication to the Answer of the Lord Somers to the Articles of Impeachment exhibited against him, be now read; It passed in the Negative.

*Ordered*, That the Message from the Lords this Day touching the Impeachments, be taken into Consideration to Morrow Morning.

*Jovis 5 die Junii, 1701.*

The House, according to Order, proceeded to take into Consideration the Message yesterday from the Lords relating to the Impeachments; and the same being read,

*Resolved*, That a Conference be desired with the Lords, upon the Subject-Matter of the said Message.

*Ordered*, That the said Message be referred to the Committee appointed to draw up the Articles of Impeachment; and that they do draw up what is to be offered to the Lords at the said Conference.

*Veneris 6 die Junii, 1701.*

Mr. Harcourt reported from the Committee appointed to draw up Articles of Impeachment, and who were to consider of the Message from the Lords the fourth of June instant, and to draw up what shall be offered at a Conference with the Lords upon the Subject-Matter of the said Message, That they had drawn up the same accordingly, and had directed him to report the same to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and agreed unto by the House, and is as followeth; *viz.*



The Commons have desired this Conference upon your Lordships Message of the fourth of June, in order to preserve a good Correspondence with your Lordships; which will always be the Endeavour of the Commons, and is at this time particularly necessary, in order to bring the impeached Lords to a speedy Trial; and because the Messages which your Lordships have thought fit to send to the Commons, and the Answers thereunto, seem not to tend towards expediting the Trials, which the Commons so much desire, but may rather furnish Matter of Dispute between the Two Houses, the Commons therefore choose to follow the Methods formerly used with good Success upon the like Occasion; and for the more speedy and easy adjusting and preventing any Differences which have already happened, or may arise, previous to, or upon these Trials, the Commons do propose to your Lordships, That a Committee of both Houses be nominated to consider of the most proper Ways and Methods of proceeding on Impeachments, according to the Usage of Parliament.

*Ordered*, That Mr. St. John do go to the Lords, and desire the said Conference.

Mr. St. John reported, That he having (according to Order) been at the Lords, to desire a Conference, the Lords do agree to a Conference accordingly, and appoint the same presently in the Painted Chamber.

*Ordered*, That the Committee who were appointed to draw up Articles of Impeachment, do manage the said Conference.

And the Managers went to the Conference; and being returned,

Mr. Harcourt reported, That they had been at the Conference, and delivered to the Lords what the House had directed; and that the impeached Lords were not at the Conference.

*Lunæ 9 die Junii, 1701.*

Mr. Bruges reported from the Committee, to whom it was referred to draw up Articles of Impeachment, That they had drawn up Articles accordingly against Charles Lord Halifax, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same were read, and agreed unto by the House, and are as follow; viz.

*Articles exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in maintenance of their Impeachment, against Charles Lord Halifax, of High Crimes and Misdemeanours.*

[These Articles being printed in Vol. 5. Pag. 367. & seq. are here omitted.]

A Message from the Lords, by Sir Richard Holford and Mr. Gery.

Mr. Speaker, We are commanded by the Lords to acquaint this House, That,\*

“ In Answer to the Message of the House of Commons of the fourth instant, the Lords say, by their Message sent on the third, where- in they declare themselves ready to proceed to

“ the Trial of any of the impeached Lords whom the Commons shall be first ready to begin with, they have given a full Proof of their Willingness to comply with the Commons in any thing which may appear reasonable, in order to the speedy determining of the Impeachments now depending: And therefore (as the Lords conceive) the Commons had no Occasion to begin any Dispute on that Head; so their Lordships are careful to decline entering into a Controversy, which seems to them to be of no Use at present.

“ The Lords think themselves obliged to assert their undoubted Right to appoint a Day for the Trial of any Impeachment depending before them, if they see good Cause for it, without any previous Signification from the Commons of their being ready to proceed; which Right is warranted by many Precedents, as well as consonant to Justice and Reason; and their Lordships, according to the Example of their Ancestors, shall always use that Right, with a Regard to the equal and impartial Administration of Justice, and with a due Care to prevent unreasonable Delays.

“ This being the Case, the Lords can't but wonder that the Commons, without any Foundation for it, should make use of Expressions which, as their Lordships conceive, have never been used before by one House of Parliament to another; and which, if the like were returned, must necessarily destroy all good Correspondence between the Two Houses.

“ The last Part of the Commons Message being in effect a Repetition only of their former of the thirty-first of May, to which the Lords have already returned a full Answer, their Lordships think it not requisite to say more, than that they cannot apprehend with what Colour their calling upon the House of Commons to send up Articles against two Lords, whom the Commons have so long since impeached in general Terms, can be said to tend to the Delay of Justice. And therefore as the Lords think the Commons ought to have foreborn that Reflexion; so their Lordships, in saying no more upon the Occasion of this Message of the Commons, think they have given a convincing Proof of their Moderation, and of their sincere Desire of preserving a good Correspondence between the Two Houses, which is so necessary for the publick Security, as well as doing Right upon the Impeachments.

*Ordered*, That the said Message, relating to the Impeachments, be referred to the Committee who were appointed to draw up Articles of Impeachment, and to search Precedents, and to draw up an Answer thereunto.

A Message from the Lords, by Sir Richard Holford and Mr. Gery.

Mr. Speaker, We are commanded by the Lords to acquaint this House, That the Lords have appointed the Trial of John Lord Somers on Friday next, on the Impeachment against him by this House.

*Ordered*, That the said Message be taken into Consideration to Morrow Morning.

\* Though this Message is printed in Vol. 5. Pag. 361. yet, to preserve the Connexion, and as it is printed in the Commons Proceedings, is here inserted; as are some other Messages.

*Martis 10 die Junii, 1701.*

Mr. *Harcourt* reported from the Committee, to whom it was referred to draw up Articles of Impeachment, That they had (according to Order) drawn up an Answer to the Message from the Lords yesterday, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and (with an Amendment) agreed unto by the House, and is as followeth; *viz.*

" The Commons, in hopes of avoiding all Interruptions and Delays in proceeding against the impeached Lords, and the many Inconveniencies which might arise thereby, having proposed to your Lordships at a Conference, That a Committee of both Houses might be nominated to consider of the most proper Ways and Methods of proceeding on Impeachments; think they might justly have expected your Lordships Compliance with their said Proposition, instead of your Lordships Answer to their Message of the fourth instant, which they yesterday received. In which Answer of your Lordships, though many Matters of great Exception are contained, a suitable Reply whereunto would inevitably destroy all good Correspondence between the Two Houses; yet the Commons, from an earnest Desire to preserve the same, as well as to give the most convincing Proof of their Moderation, and to shew their Readiness to bring the impeached Lords to speedy Justice, at present insist only on their Proposition for a Committee of both Houses to settle and adjust the necessary Preliminaries to the Trials; particularly, Whether the impeached Lords shall appear on their Trials at your Lordships Bar as Criminals; Whether, being under Accusations of the same Crimes, they are to sit as Judges on each others Trials for those Crimes, or can vote in their own Cases, as we find by your Lordships Journals, since their being impeached, they have been admitted to do; which Matters, and some others, being necessary to be adjusted, the Commons cannot but insist on a Committee of both Houses to be appointed for that purpose. Their departing from which would be giving up the Rights of the Commons of *England*, known by unquestionable Precedents and the Usage of Parliament, and making all Impeachments (the greatest Bulwark of the Laws and Liberties of *England*) impracticable for the future.

Ordered, That Mr. *Harcourt* do carry the Answer to the Lords.

The House (according to Order) proceeded to take into Consideration the Message from the Lords yesterday, whereby they acquainted this House, That they have appointed the Trial of *John Lord Somers* on Friday next, on the Impeachment against him; and the same was read.

Ordered, That the said Message be referred to the Committee appointed to draw up Articles of Impeachment, to prepare an Answer to the said Message.

A Message from the Lords, by Sir *Richard Holford* and Mr. *Gery*.

Mr. Speaker, The Lords do desire a present Conference with this House in the *Painted Chamber*, upon the Subject-Matter of the last Conference.

To which the House agreed; and the Messengers were called in again, and Mr. Speaker acquainted them therewith.

Ordered, That the Committee that managed the last Conference, do manage this Conference.

And the Managers went to the Conference; and being returned,

Mr. *Harcourt* reported, That he had (according to Order) carried the said Answer to the Lords.

Mr. *Harcourt* also reported, The Managers appointed had met the Lords at the Conference; and that the Conference, on the Part of the Lords, was managed by the Duke of *Devonshire*, who acquainted them,

" That the Lords have desired this Conference upon Occasion of the last Conference, in order to preserve a good Correspondence with the House of Commons, which they shall always endeavour.

" As to the late Messages between the Two Houses, their Lordships are well assured, that on their part nothing has passed but what was agreeable to the Methods of Parliament, and proper to preserve that good Understanding between both Houses which is necessary for the carrying on of the publick Business.

" As to the Proposal of the Commons, That a Committee of both Houses should be appointed, to consider of the Ways and Methods of Proceedings on Impeachments, their Lordships cannot agree to it;

1. " Because they do not find that such a Committee was appointed on Occasion of Impeachments for Misdemeanours; and their Lordships think themselves obliged to be extremely cautious in admitting any thing new in Matters relating to Judicature.

2. " That although a Committee of this Nature was agreed to upon the Impeachments of the Earl of *Danby* and the five Popish Lords for High Treason; yet it was upon occasion of several considerable Questions and Difficulties which did then arise. And their Lordships do not find that the Success in that Instance was such, as should encourage the pursuing the same Methods again, though in the like Case: The Lords observing, that after much Time spent at that Committee, the Disputes were so far from being there adjusted, that they occasioned an abrupt Conclusion of a Session of Parliament.

3. " Their Lordships are of Opinion, That the Methods of Proceedings on Impeachments for Misdemeanours are so well settled by the Usage of Parliament, that they do not foresee any Difficulties likely to happen; at least none have been yet stated to them: And all the Preliminaries in the Case of *Stephen Goudett*, and others (which was the last Instance of Impeachments for Misdemeanours) were easily settled and agreed to without any such Committee.

4. " The Lords cannot but observe, That this Proposal of the Commons comes so very late, that their Lordships can expect no other Fruit of such a Committee, but the preventing of the Trials during this Session.

" The



" The Lords assure the Commons, That in case any Difficulties shall arise in the Progress of these Trials (which their Lordships do not foresee) they will be ready to comply with the Commons in removing them, as far as Justice and the Usage of Parliament will admit.

*Ordered*, That the said Report be taken into Consideration to Morrow Morning.

*Mercurii 11 die Junii, 1701.*

The House (according to Order) took into Consideration the Report of the Conference with the Lords yesterday.

*Ordered*, That a free Conference be desired with the Lords upon the Subject-Matter of the last Conference.

Mr. *Harcourt* reported from the Committee appointed to draw up Articles of Impeachment, That they had, according to Order, drawn up an Answer to the Message from the Lords on Monday last, for appointing the Trial of the Lord *Somers* upon Friday next, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and agreed unto by the House, and is as followeth, viz.

" The Commons, on Monday last, received a Message from your Lordships, That your Lordships had appointed the Trial of *John Lord Somers* upon Friday next, on their Impeachment against him; in which they observe your Lordships have not nominated any Place for his Trial, though your Lordships thought fit to make that Matter on the last Impeachment for Misdemeanour the Subject of a long Debate.

" And they cannot but take Notice, That your Lordships have taken as long a Time to give your Answer to the Commons Desire of a Committee of both Houses, delivered at a Conference on Friday last, as you are pleased to allow the Commons to have of the Day appointed by your Lordships for the said Trial.

" Your Lordships appointing so short a Day, especially whilst the Proposition made to your Lordships for a Committee of both Houses was undetermined, the Commons take to be such a Hardship to them, and such an Indulgence to the Persons accused, as is not to be paralleled in any Parliamentary Proceeding.

" The Commons must likewise acquaint your Lordships, That their Experience of the Interruption of a former Trial on an Impeachment for Misdemeanours, for want of settling the Preliminaries between the Two Houses, obliges them to insist on a Committee of both Houses for preventing the like Interruption.

" And they conceive 'twould be very preposterous for them to enter upon the Trial of any of those Lords, till your Lordships discover some Inclination to make the Proceeding thereupon practicable; and therefore they think they have Reason to insist upon another Day to be appointed for the Trial of the Lord *Somers*. And the Commons doubt not but to satisfy your Lordships, at a free Conference, of the Necessity of having a Committee of both Houses, before they can proceed upon the said Trial.

*Ordered*, That Mr. *Harcourt* do carry the said Answer to the Lords.

*Ordered*, That Col. *Granville* do go to the Lords, and desire the free Conference.

Mr. *Harcourt* reported, That he had (according to Order) delivered the Answer to the Lords Message.

*Jovis 12 die Junii, 1701.*

Colonel *Granville* reported, That he having (according to Order) been at the Lords to desire a free Conference with their Lordships upon the Subject-Matter of the last Conference, the Lords answered, That they will send an Answer by Messengers of their own.

The engrossed Articles of Impeachment against *Charles Lord Halifax* were read.

*Ordered*, That the Articles be carried to the Lords.

*Ordered*, That Mr. *Bruges* do carry the said Articles to the Lords.

*Ordered*, That he do also pray and demand, That *Charles Lord Halifax* do give sufficient Security to abide the Judgment of the House of Lords.

A Message from the Lords by Dr. *Newton* and Mr. *Gery*.

Mr. Speaker, We are commanded by the Lords to acquaint this House, That,

" In Answer to the Message from the House of Commons of the tenth Instant, the Lords say, That although they take it to be unparliamentary in many Particulars, yet to shew their real Desire of avoiding Disputes, and removing all Pretence of delaying the Trials of the impeached Lords, they will only take Notice of that Part of their Message wherein the Commons propose some Things as Difficulties in respect of the Trials, which Matters relating wholly to their Judicature, and to their Rights and Privileges as Peers, they think fit to acquaint the Commons with the following Resolutions of the House of Lords.

I. *That no Lord of Parliament, impeached of High Crimes and Misdemeanours, and coming to his Trial, shall, upon his Trial, be without the Bar.*

II. *That no Lord of Parliament, impeached of High Crimes and Misdemeanours, can be precluded from Voting on any Occasion, except in his own Trial.*

" Their Lordships further take Notice of a Mistake in Point of Fact alledged in the Message of the Commons, it no way appearing upon their Journals, that the Lords impeached have voted in their own Case.

" The Lords, being well assured that all the Steps that have been taken by them in relation to these Impeachments, are warranted by the Practice of their Ancestors, and the Usage of Parliament, have Reason to expect the Trials shall proceed without Delay.

Also, That they are commanded by the Lords to acquaint this House, That,

" In Answer to the Message of the House of Commons yesterday, the Lords say, That they cannot give a greater Evidence of their sincere and hearty Desires of avoiding all Differences with the House of Commons, and of proceeding

" ing

“ ing on the Trials of the Impeachments, than  
“ by not taking notice of the several just Exceptions  
“ to which that Message is liable, both as  
“ to the Matter and Expressions.

“ The Lords have nothing farther from their  
“ Thoughts, than the going about to do any  
“ thing which might have the least Appearance  
“ of Hardship with relation to the Commons.

“ But the Answer of the Lord *Somers* to the  
“ Articles exhibited against him, having been sent  
“ down to the Commons on the twenty-fourth of  
“ *May* last, and they having by their Message  
“ of the thirty-first of *May* signified to their  
“ Lordships their Intention of beginning with  
“ the Trial of his Impeachment in the first place ;  
“ The Lords, considering how far the Session  
“ is advanced, thought it reasonable to appoint  
“ the thirteenth instant for the said Trial, their  
“ Lordships finding several Precedents of appointing  
“ Trials in Impeachments within a shorter time.

“ The Lords also think it incumbent upon  
“ them to endeavour to dispatch the Trials of  
“ all the impeached Lords before the Rising of  
“ the Parliament. This is what Justice requires,  
“ and cannot be looked upon as a Matter of Indulgence :  
“ Nevertheless, that the Commons may see how desirous  
“ their Lordships are to comply with them in any thing  
“ which may be consistent with Justice, they have appointed  
“ the Trial of Impeachment against *John* Lord  
“ *Somers* on *Tuesday* the seventeenth of this instant  
“ *June*, at Ten o’Clock in the Forenoon, in the  
“ House of Lords, which will be then sitting in  
“ *Westminster-Hall*.

Also, That they were commanded by the Lords  
to acquaint this House, That the Lords do agree  
to a free Conference with the Commons, as desired ;  
and do appoint to Morrow at One o’Clock  
in the *Painted Chamber*.

Ordered, That the said two first Messages be  
referred to the Committee who were appointed to  
draw up the Articles of Impeachment.

*Veneris 13 die Junii, 1701.*

Mr. *St. John* reported from the Committee to  
whom it was referred to draw up the Articles of  
Impeachment, and to whom the Messages from  
the Lords yesterday were referred, That they  
had drawn up an Answer to the said Messages,  
which they had directed him to report to the  
House ; which he read in his Place, and afterwards  
delivered in at the Clerk’s Table ; where the same  
was read and agreed unto by the House, and is as  
followeth ; *viz.*

“ The House of Commons find greater Reason  
“ to insist upon their Proposal of a Committee  
“ of both Houses from the two Messages received  
“ yesterday from your Lordships ; for their Ambiguity  
“ and Uncertainty do shew the Methods of former  
“ Parliaments to be the most proper way for Dispatch  
“ of Business.

“ The Commons have been obliged to employ  
“ that Time in considering and answering your  
“ Lordships Messages, which otherwise would have  
“ been spent in preparing for the Lord *Somers*’s  
“ Trial ; so that the Delay must be charged where  
“ the Occasion ariseth. And the Commons have desired  
“ a Committee of

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“ both Houses, to adjust the Preliminaries of the  
“ Trials, cannot but think it strange your Lordships  
“ should come to Resolutions upon two of those  
“ Points, while the Proposal of the House of Commons  
“ is under Debate at Conferences between the Two  
“ Houses, the Commons having other Difficulties to  
“ propose, which concern them as Prosecutors, and  
“ all future Impeachments.

“ And though the Commons leave the Subject  
“ of your Lordships Resolutions, with other things,  
“ to be debated at a Committee of both Houses ; yet they  
“ cannot but observe that your Lordships second  
“ Resolution is no direct Answer to the Commons  
“ Proposal ; which was, Whether Peers impeached  
“ of the same Crimes shall vote for each other upon  
“ their Trial for the same Crimes : And the Commons  
“ cannot believe that any such Rule can be laid down  
“ in plain Words, where there is a due Regard to  
“ Justice.

“ And as to what your Lordships observe, That  
“ there is a Mistake in Point of Fact alleged by the  
“ Commons ; this House may take notice of the  
“ Cautions used by your Lordships, in wording that  
“ Part of your Message ; for they know your  
“ Lordships are too well acquainted with the Truth  
“ of the Fact, to affirm that the impeached Lords  
“ did not vote in their own Cases : And though the  
“ appearing or not appearing upon your Lordships  
“ Journal, does not make it more or less agreeable  
“ to the Rules of Justice ; yet the Commons cannot  
“ but add this further Observation from your  
“ Lordships Journal, That the impeached Lords  
“ Presence is not only recorded when those Votes  
“ passed, but they also find some of them appointed  
“ of Committees for preparing and drawing up the  
“ Messages and Answers to the House of Commons ;  
“ which they do not think has been the best  
“ Expedient for preserving a good Correspondence  
“ between the Two Houses, or adjusting what will  
“ be necessary upon these Trials : And therefore the  
“ Commons cannot think it agreeable to the Rules  
“ of Parliament for them to appear at a Trial,  
“ till all necessary Preliminaries are first settled  
“ with your Lordships.

Ordered, That the said Answer be sent to the  
Lords.

Ordered, That Mr. *St. John* do carry the said  
Answer.

Ordered, That the Committee who managed  
the last Conference do manage the free Conference.

And the Managers went to the Conference ;  
and being returned,

Mr. *Harcourt* reported what had happened at  
the Conference in a Speech of the Lord *Haversham*,  
upon which the Managers thought fit to withdraw  
from the Conference, to the end they might acquaint  
the House therewith.

Ordered, That the Managers do withdraw into  
the Speaker’s Chamber, and collect the Matter of  
the Conference, and what was said by the Lord  
*Haversham*, and report the same to the House.  
And the Committee withdrew ; and the House  
adjourned till the Return of the Committee.



The Committee being return'd,  
Mr. *Harcourt* reported the Matter of the free Conference, and the Words which the Lord *Haversham* had spoke thereat, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and is as followeth, viz.

" That the Managers appointed by this House met the Lords at a free Conference, the Subject Matter whereof was open'd by Mr. *Harcourt*, and immediately afterwards further argued by Sir *Bartholomew Shower*.

" It was insisted on by each of them, That the Reasons offered by their Lordships at the last Conference, were not sufficient for their Lordships disagreeing to a Committee of both Houses, desired by the Commons at the first Conference.

" That notwithstanding those Reasons, the Commons still thought a Committee of both Houses absolutely necessary for adjusting and preventing such Differences as had happen'd, or might arise previous to, or upon the Trials; and therefore insisted that such a Committee should be appointed, before the Commons could proceed on any Trial.

" 'Twas urged as one Reason for such a Committee, That many Difficulties might happen, whereby the Trials might be obstructed, if the Preliminaries should not be first adjusted; as one Instance, that Point of several Lords being under Impeachments of the same Crimes, voting on each others Trials, was mention'd.

" The Lord Steward first replied, and nothing was offer'd by his Grace but what was material and pertinent to the Matter in Question, and agreeable to the Method of Parliament in free Conferences.

" That *John Lord Haversham* spoke immediately after, and in his Lordship's Discourse used these, or the like Expressions.

ONE Thing there is, though I can't speak to it, because I am bound up by the Orders of the House; yet it must have some Answer: That is, as to the Lords voting in their own Case; it requires an Answer, though I can't go into the Debate of it. The Commons themselves have made this Precedent, for in these Impeachments they have allow'd Men guilty of the same Crimes to vote in their own House, and therefore we have not made any Distinction in our House, that some should vote, and some not. The Lords have so high an Opinion of the Justice of the House of Commons, that they hope Justice shall never be made use of as a Mask for any Design; and therefore give me Leave to say (though I am not to argue it) 'tis a plain Demonstration, that the Commons think these Lords innocent; and I think the Proposition is undeniable, for there are several Lords in the same Crimes, in the same Facts, there is no Distinction: And the Commons leave some of these Men at the Head of Affairs, near the King's Person, so do any Mischief if their Persons were inclined to it, and impeach others, when they are both alike Guilty, and concern'd in the same Facts. This is a Thing I was in hopes I should never have heard asserted, when the Beginning of it was from the House of Commons.

" These Expressions were instantly objected to by Sir *Christopher Musgrave*; and the Ma-

nagers took them to be so great an Aspersion on the Honour of this House, that they thought themselves obliged in Duty immediately to withdraw from the free Conference.

As the Managers were withdrawing, his Grace my Lord Steward spoke to the Effect following; " That he hoped we would not think that Lord had any Authority from the House of Lords, to use any such Expressions towards the Commons.

*Resolved*, That *John Lord Haversham* hath, at the free Conference this Day, utter'd most scandalous Reproaches and false Expressions, highly reflecting upon the Honour and Justice of the House of Commons, and tending to the making a Breach in the good Correspondence between the Lords and Commons, and to the interrupting the publick Justice of the Nation, by delaying the Proceedings on the Impeachments.

*Resolved*, That *John Lord Haversham* be charged before the Lords, for the Words spoken by the said Lord this Day at the free Conference: And that the Lords be desired to proceed in Justice against the said Lord *Haversham*, and to inflict such Punishment upon the said Lord, as so high an Offence against the House of Commons does deserve.

*Ordered*, That Sir *Christopher Musgrave* do carry the said Charge and Resolution to the Lords.

A Message from the Lords by Dr. *Newton* and Mr. *Gery*.

Mr. Speaker, The Lords having being inform'd by their Managers, that some Interruption happen'd at the free Conference, which their Lordships are concern'd at, because they wish that nothing should interrupt the publick Business; do desire the Commons would come again presently to the said free Conference, which they do not doubt will prove the best Expedient to prevent the Inconvenience of a Misunderstanding upon what has past.

*Resolved*, That this House will send an Answer by Messengers of their own.

And the Messengers were call'd in again, and Mr. Speaker acquainted them therewith.

Sir *Christopher Musgrave* reported, That he had been at the Lords, and (according to Order) deliver'd the Charge and Resolution of the House, relating to the Lord *Haversham*.

Sabbati 14 die Junii, 1701.

A Message from the Lords by Sir *John Hoskins* and Dr. *Newton*.

Mr. Speaker, The Lords have commanded us to acquaint this House,

That upon the Occasion of their last Message yesterday, in order to continue a good Correspondence between the Two Houses, their Lordships did immediately appoint a Committee to state the Matter of the free Conference, and also to inspect Precedents of what has happen'd of the like Nature; and that the publick Business may receive no Interruption, the Time desired by their Lordships for renewing the free Conference being elapsed, their Lordships desire a present free Conference in the Painted Chamber, upon the Subject-Matter of the last free Conference.

*Resolved*, That this House will send an Answer by Messengers of their own.

And the Messengers were called in again, and Mr. Speaker acquainted them therewith.

*Resolved*,

*Resolved*, That an Answer be return'd to the Lords, That the Commons are extremely desirous to preserve a good Correspondence between the Two Houses, and to expedite the Trials of the impeach'd Lords; but do conceive 'tis not consistent with the Honour of the Commons to renew the free Conference, until they have received Reparation by their Lordships doing Justice upon *John Lord Haversham*, for the Indignity he Yesterday offer'd to the House of Commons.

*Ordered*, That the Lord *Cbeine* do carry the said Answer to the Lords.

Mr. *Bruges* reported, That he had carried the Articles of Impeachment against *Charles Lord Halifax* to the Lords, and had demanded, That the said Lord *Halifax* do give Security to abide the Judgment of the House of Lords.

The Lord *Cbeine* reported, That he had (according to Order) been at the Lords, and delivered the Answer to their Lordships Message.

*Lunæ 16 die Junii, 1701.*

A Message from the Lords by Sir *Richard Holford* and Dr. *Newton*.

Mr. Speaker, We are commanded by the Lords to acquaint this House, That the Lord *Somers* having inform'd the Lords, that Sir *Stephen Fox*, *John Smith*, Esq; *William Lownds*, Esq; *Stephen Harvey*, Esq; and *William Gulton*, Esq; Members of this House, may be material Witnesses for him, at his Trial on *Tuesday* next in *Westminster-Hall*, the Lords desire that they may have Leave to attend and give their Testimonies at the said Trial. And that a Letter which his Majesty was pleased to write to him in 1698, being now in this House, will be necessary for his Defence at his Trial, they desire that the said Letter may be produced at the said Trial.

*Resolved*, That this House will send an Answer to the said Message by Messengers of their own.

And the Messengers were call'd in again, and Mr. Speaker acquainted them therewith.

*Ordered*, That the Committee who were appointed to draw up the Articles of Impeachment, do consider of the Reasons why this House cannot proceed to the Trial of the Lord *Somers* to Morrow Morning, and report the same to the House.

*Ordered*, That the said Message be referred to the said Committee.

A Message from the Lords by Sir *John Francklyn* and Sir *Richard Holford*.

Mr. Speaker, We are commanded by the Lords to acquaint this House, That the Lords taking into their Care the ordering of the Trial of *John Lord Somers* on *Tuesday* the 17th of *June* Instant at Ten of the Clock in *Westminster-Hall*, have prepared some Notes and Rules to be observed at the said Trial, which the Lords have thought fit to communicate to this House.

*Die Lunæ 16 Junii, 1701.*

That the whole Impeachment is to be read, and then the Answer; which being done, the Lord Keeper is to tell the Commons, That now they may go on with their Evidence.

Then the Lord Keeper is to declare, That now the Court is proceeding to hear the Evidence, and desire the Peers to give Attention.

If any of the Peers, or the Members of the House of Commons that manage the Evidence, or the Lord impeach'd, do desire to have any Question ask'd, they must desire the Lord Keeper to ask the same.

If any Doubt doth arise at the Trial, no Debate is to be in the Court, but the Question suspended to be debated in this House.

The Members of the House of Commons to be there before the Peers come.

None to be covered at the Trial, but the Peers.

That such Peers at the Trial of the impeach'd Lord, who at the Instance of the said Lord, or of the Commons, shall be admitted Witnesses, are to be sworn at the Clerk's Table, and the Lord Keeper to administer the Oath, and to deliver their Evidence in their own Places.

Those Witnesses that are Commoners are to be sworn at the Bar by the Clerk, and are to deliver their Evidence there.

The Oath to be,

*The Evidence which you shall give upon the Impeachment of ——— shall be the Truth, the whole Truth, and nothing but the Truth; so help you God, and the Contents of this Book.*

The impeach'd Lord may cross-examine Witnesses *viva voce*.

*Ordered*, That the said Message, or Notes and Rules, be referred to the Committee appointed to draw up the Articles of Impeachment.

A Message from the Lords by Sir *John Francklyn* and Sir *Richard Holford*.

Mr. Speaker, The Lords have commanded us to acquaint this House, That the Lord *Halifax* hath put in his Answer to the Articles exhibited against him by this House, and to deliver a Copy thereof to this House.

Also the Lords have commanded us to acquaint this House, That this House having, the first Day of *April*, sent up to their Lordships an Impeachment against *William Earl of Portland*, for high Crimes and Misdemeanours, and there being as yet no particular Articles exhibited against him, their Lordships think themselves obliged to put this House in mind thereof.

A Message from the Lords by Sir *John Francklyn*, and Sir *Richard Holford*.

Mr. Speaker, We are commanded by the Lords to acquaint this House, That for the keeping a good Correspondence between the Two Houses, and to put the Charge against *John Lord Haversham* in a Course of Justice, at his Lordship's Motion, have ordered his Lordship a Copy of the Charge against him, and that he do put in his Answer thereunto, in order to bring that Matter to a speedy Judgment.

*Martis 17 die Junii, 1701.*

*Ordered*, That no Member of this House do presume to go into the Place appointed by the Lords for the Trial of the Lord *Somers*, without Leave of this House.

*Ordered*, That the Serjeant at Arms attending this House, do go with the Mace, and Summon all the Members of this House that are in, or about *Westminster-Hall*, immediately to attend the Service of the House.

And he went accordingly; and being return'd, Mr.



Mr. *Harcourt* reported from the Committee appointed to draw up Articles of Impeachment, and to whom the Messages from the Lords Yesterday were referr'd, to draw up Reasons why they cannot proceed to the Trial of the Lord *Somers* this Day, That they had drawn up Reasons, which they had directed him to report to the House accordingly, which he read in his Place, and afterwards deliver'd in at the Clerk's Table, where the same were read and agreed unto by the House, and are as follow.

“ THE Commons, in this whole Proceed-  
“ ing against the impeach'd Lords, have  
“ acted with all imaginable Zeal, to bring them  
“ to a speedy Trial; and they doubt not but  
“ 'twill appear, by comparing their Proceedings  
“ with all others upon the like Occasion, that  
“ the House of Commons have nothing to blame  
“ themselves for, but that they have not expres-  
“ sed the Resentment their Ancestors have justly  
“ shewed upon much less Attempts, which have  
“ been made upon the Power of Impeachments.

“ The Commons, on the thirty-first of *May*,  
“ acquainted your Lordships, that they thought  
“ it proper, from the Nature of the Evidence,  
“ to proceed in the first Place upon the Trial of  
“ the Lord *Somers*, upon the first Intimation  
“ from your Lordships some Days afterwards,  
“ That you would proceed to the Trial of any  
“ of the impeach'd Lords, whom the Commons  
“ should be first ready to begin with; notwith-  
“ standing your Lordships had before thought fit  
“ to appoint which Impeachment should be first  
“ tried, and affix a Day for such Trial, without  
“ consulting the Commons, who are the Profes-  
“ sors.

“ The Commons determining to expedite the  
“ Trials to the utmost of their Power, in hopes  
“ of attaining that End, and for the more speedy  
“ and easy adjusting and preventing any Differ-  
“ ences which had happen'd, or might arise,  
“ previous to or upon these Trials, proposed to  
“ your Lordships at a Conference, the most par-  
“ liamentary and effectual Method for that Pur-  
“ pose, and that which in no manner intrench'd  
“ upon your Lordships Judicature, That a Com-  
“ mittee of both Houses should be nominated to  
“ consider of the most proper Ways and Methods  
“ of Proceedings upon Impeachments, according  
“ to the Usage of Parliament.

“ In the next Message to the Commons, upon  
“ Monday the ninth of *June*, your Lordships  
“ thought fit, without taking the least Notice of  
“ this Proposition, to appoint the *Friday* then  
“ following, for the Trial of the said Lord *So-  
“ mers*; whereunto, as well as to many other  
“ Messages and Proceedings of your Lordships  
“ upon this Occasion, the House of Commons  
“ might have justly taken very great Exceptions;  
“ yet, as an Evidence of their Moderation, and  
“ to shew their Readiness to bring the impeach'd  
“ Lords to speedy Justice, the Commons insisted  
“ only on their Proposition, for a Committee of  
“ both Houses to settle and adjust the necessary  
“ Preliminaries to the Trial: Particularly, Whe-  
“ ther the impeach'd Lords should appear on  
“ their Trial at your Lordships Bar as Crimi-  
“ nals? Whether being under Accusations of  
“ the same Crimes, they should sit as Judges on  
“ each others Trial for those Crimes, or should  
“ vote in their own Cases, as 'tis notorious they

“ have been permitted by your Lordships to do,  
“ in many Instances which might be given? To  
“ which Particulars your Lordships have not yet  
“ given a direct Answer, though put in Mind  
“ thereof by the Commons.

“ Your Lordships, at a Conference, having  
“ offered some Reasons why you could not agree  
“ to a Committee of both Houses, to adjust the  
“ necessary Preliminaries, the Commons there-  
“ upon desired a free Conference, and your  
“ Lordships agreed thereunto; at which 'tis  
“ well known to many of your Lordships who  
“ were then present, what most scandalous Re-  
“ proaches, and false Expressions, highly re-  
“ flecting upon the Honour and Justice of the  
“ House of Commons, were utter'd by *John*  
“ Lord *Haversham*, whereby the Commons were  
“ under a Necessity of withdrawing from the  
“ said free Conference; for which Offence the  
“ Commons have, with all due Regard to your  
“ Lordships, prayed your Lordships Justice  
“ against the Lord *Haversham*, but have as yet  
“ received no manner of Satisfaction.

“ The Commons restrain themselves from enu-  
“ merating your Lordships very many irregular  
“ and unparliamentary Proceedings upon this  
“ Occasion; but think it is what they owe to  
“ publick Justice, and all the Commons of *Eng-  
“ land*, whom they represent, to declare some  
“ few of those Reasons why they peremptorily  
“ refuse to proceed to the Trial of the Lord  
“ *Somers* on the seventeenth of *June*.

“ First, Because your Lordships have not yet  
“ agreed, That a Committee of both Houses  
“ should be appointed for settling the necessary  
“ Preliminaries; a Method never until this Time  
“ denied by the House of Lords, whensoever the  
“ Commons have thought it necessary to desire  
“ the same.

“ Secondly, Should the Commons (which they  
“ never will do) be contented to give up those  
“ Rights which have been transmitted to them  
“ from their Ancestors, and are of absolute Ne-  
“ cessity to their Proceedings on Impeachments;  
“ yet whilst they have any Regard to publick  
“ Justice, they never can appear as Prosecutors  
“ before your Lordships, 'till your Lordships  
“ have first given them Satisfaction, That Lords  
“ impeach'd of the same Crimes shall not sit as  
“ Judges on each others Trials for those Crimes.

“ Thirdly, Because the Commons have, as yet,  
“ received no Reparation for the great Indignity  
“ offered to them at the free Conference by the  
“ Lord *Haversham*: The Commons are far from  
“ any Inclination, and cannot be supposed to be  
“ under any Necessity of delaying the Trial of  
“ the Lord *Somers*: There is not any Article  
“ exhibited by them in maintenance of their  
“ Impeachment against the Lord *Somers*, for the  
“ Proof whereof they have not full and undeni-  
“ able Evidence; which they will be ready to  
“ produce as soon as your Lordships shall have  
“ done Justice upon the Lord *Haversham*, and  
“ the necessary Preliminaries, in order to the said  
“ Trial, shall be settled by a Committee of both  
“ Houses.

“ The Commons think it unnecessary to ob-  
“ serve to your Lordships, That most of the  
“ Articles whereof the Lord *Somers* stands im-  
“ peach'd, will appear to your Lordships to be  
“ undoubtedly true from Matters of Record, as  
“ well as by the Confession of the said Lord  
“ *Somers*,

" *Somers*, in his Answer to the said Articles, to which the Commons doubt not but your Lordships will have a due Regard when his Trial shall regularly proceed.

*Resolved*, That the said Reasons be sent by a Message to the Lords.

*Ordered*, That the Earl of *Dyſert* do carry the said Message.

The Earl of *Dyſert* reported to the House, That he had (according to their Order) carried up their Message to the Lords.

*Ordered*, That no Member of this House do presume to appear at the Place erected for the pretended Trial of the Impeachment of the Lord *Somers*, under the Penalty of incurring the utmost Displeasure of this House.

*Mercurii 18 die Junii, 1701.*

*Ordered*, That a Committee do inspect the Lords Journals, with relation to the Proceedings against the impeach'd Lords, and report what they find therein.

*Ordered*, That the Committee who were appointed to draw up the Articles of Impeachment, be the said Committee.

*Ordered*, That no Member of this House do presume to go out of Town.

*Ordered*, That all Members of this House do attend the Service of the House on Friday Morning next.

*Veneris 20 die Junii, 1701.*

A Message from the Lords by Sir *John Franklin* and Sir *Lacon William Child*.

Mr. Speaker, We are commanded by the Lords to acquaint this House, That the Lords have appointed Monday the twenty-third Day of this Instant June, at Ten of the Clock in the Forenoon, for the Trial of *Edward Earl of Orford*, in Westminster-Hall.

Also, That they are commanded by the Lords to deliver to this House a Copy of the Lord *Haverſham's* Answer to the Charge against him.

Also, That the Lords, in Answer to the Message of the Commons of the seventeenth Instant, say, The only true Way of determining which of the Two Houses has acted with the greatest Sincerity, in order to bring the impeach'd Lords to their Trials, is to look back upon the respective Proceedings.

The Lords do not well understand what the Commons mean by that Resentment which they speak of in their Message. Their Lordships own the House of Commons have a Right of Impeaching; and the Lords have the undoubted Power of doing Justice upon those Impeachments, by bringing them to Trial, and condemning or acquitting the Parties in a reasonable Time. This Power is derived to them from their Ancestors, which they will not suffer to be wrested from them by any Pretences whatsoever.

Their Lordships cannot but wonder, that the Commons should not have proposed a Committee of both Houses much sooner, if they thought it so necessary for the bringing on the Trials; no Mention being made of such a Committee from the first of April to the sixth of June, altho' during that Interval their Delays were frequently complain'd of by the House of Lords.

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The Manner in which the Commons demanded this Committee, the Lords look upon as a direct invading of their Judicature; and therefore, as there never was a Committee of both Houses yielded to by the Lords in case of any Impeachment for high Crimes and Misdemeanours; so their Lordships do insist, that they will make no new Precedent upon this Occasion. Many Impeachments for Misdemeanours have in all Times been determined without such a Committee: And if now the Commons think fit, by an unprecedented Demand, to form an Excuse for not prosecuting their Impeachments, it is demonstrable where the Obstruction lies.

As to the Preliminaries which the Commons mention in particular, as proper to be settled at such a Committee, they have received the Resolutions of the House of Lords therein by their Message of the twelfth Instant; from which, being Matters relating entirely to their Judicature, their Lordships cannot depart.

As to the last Pretence, the Commons would make to shelter the delaying the Trials, from some Expressions which fell from the Lord *Haverſham* at the free Conference, at which Offence was taken, their Lordships will only observe,

First, That they have omitted nothing which might give the Commons all reasonable Satisfaction of their Purpose to do them Justice in that Matter, so far as is consistent with doing Justice to that Lord; and also to preserve a good Correspondence with them; as appears by the several Steps they have taken.

Secondly, That this Business has no relation to the Trial of the impeach'd Lords; and therefore their Lordships cannot imagine why the Commons should make Satisfaction and Reparation against the Lord *Haverſham* a necessary Condition for the going on with the Trials, and at the same Time find no Difficulty in proceeding on other Business.

*Resolved*, In Answer to the Message of the Lords, appointing Monday next for the Trial of the Earl of *Orford*; That the Lords have been acquainted, that the Commons would proceed in the first Place against the Lord *Somers*; and they are ready to go to that Lord's Trial as soon as the Commons have received Satisfaction for the Affront offer'd to the House of Commons by the Lord *Haverſham* at the free Conference; and that the necessary Preliminaries are adjusted by a Committee of both Houses.

*Ordered*, That the Lord *Mordant* do carry the said Answer to the Lords.

The Lord *Mordant* reported to the House, That he had (according to Order) carried their Answer to the Lords.

Mr. *Briggs* reported from the Committee appointed to inspect the Lords Journals, with relation to the Proceedings against the impeach'd Lords, and report the same to the House, That they had inspected the same accordingly, and had directed him to report what they find therein; which he read in his Place, and afterwards deliver'd in at the Clerk's Table, where the same was read, and is as followeth, viz.

*A Copy of the Lords Journal.*

The House being moved to go into Westminster-Hall, in order to the Trial of the Lord *Somers*;



After Debate,  
The Question was put, Whether this House shall go this Day into *Westminster-Hall*, in order to proceed upon the Trial of the Lord Somers, according to the Order of the Day?  
It was resolved in the Affirmative.

June 16, 1701.

*Dissentient,*

The Reasons, by an Order of the next Day, are here expunged.

<i>Somerset,</i>	<i>Denbigh,</i>
<i>H. London,</i>	<i>Warrington,</i>
<i>Normanby,</i>	<i>Tbo. Roffen,</i>
<i>Rockefter,</i>	<i>Hunsdon,</i>
<i>Caernarvon,</i>	<i>Weston,</i>
<i>Marlborough,</i>	<i>Jeffreys,</i>
<i>Oxford,</i>	<i>Guilford,</i>
<i>La Warr,</i>	<i>Godolphin,</i>
<i>Dartmouth,</i>	<i>Cholmondeley,</i>
<i>Weymouth,</i>	<i>Howard,</i>
<i>Jonat. Exon,</i>	<i>Lexington,</i>
<i>Scarsdale,</i>	<i>Peterborough,</i>
<i>Nottingham,</i>	<i>Thanet,</i>
<i>Feverham,</i>	<i>Derby,</i>
<i>Plymouth,</i>	<i>Fermyn,</i>
<i>Abingdon,</i>	<i>Northumberland.</i>

June 17.

The Lord Bishop of *Hereford* being sick, his Absence was excused in the Hall.

A Message was sent to the House of Commons by Mr. Baron Tracy, and Mr. Baron Bury, to acquaint them, That the Lords intend presently to proceed to the Trial of *John Lord Somers* in *Westminster-Hall*.

Then this Question was proposed, Whether the Earl of *Orford* and Lord *Halifax* may withdraw at the Trial of the Lord Somers?

Then this previous Question was put, Whether this Question shall be now put?

It was resolved in the Affirmative.

Then the main Question was put, Whether the Earl of *Orford* and Lord *Halifax* shall have Leave to withdraw at the Trial of the Lord Somers?

It was resolved in the Affirmative.

Then the Lord Keeper desired that some further Directions be given to him in order to the Trial in the Hall, and proposed, That this Proclamation be made in the Hall, viz.

*Whereas the Charge of High Crimes and Misdemeanours has been exhibited by the House of Commons, in the Name of themselves and all the Commons of England, against John Lord Somers, all Persons concern'd are to take Notice, That he now stands upon his Trial: And they may now come forth in order to make good the said Charge.*

After Debate,

The Question was put, Whether this Proclamation should be made?

It was resolved in the Affirmative.

Ordered, That the said Proclamation be made in the Hall before the reading the Articles of Impeachment, and the Lord Somers Answer, and also after they are read.

Ordered, That the Court in *Westminster-Hall* be clear'd for the Lords.

The Earl of *Anglesea* being sick, his Absence was excused.

Then the House adjourn'd into *Westminster-Hall*, and the Lords were call'd by the Herald, and went as order'd, and being seated in the Hall,

The House was resumed.

Then Proclamation was made for Silence, as follows.

*Our Sovereign Lord the King, &c.*

The Lord Keeper asked Leave for the Judges to be covered, which was agreed to.

Then the Proclamation, as above ordered, was made.

After which,

The Articles against *John Lord Somers* were read, and also his Lordship's Answer to them.

After which, the same Proclamation was again made.

Then the Lord Keeper declared, the House was ready to hear the Evidence against *John Lord Somers*, and therefore desired the Lords to give Attention.

The Lord Somers moved to have his Council heard.

Whereupon,

The House adjourn'd to the House above.

The House was resumed.

The House being moved to acquit the Lord Somers, and after long Debate, and hearing the Judges to several Questions asked them by the Lords,

This Question was proposed,

That *John Lord Somers* be acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contain'd; and that the said Impeachment be dismissed.

Then this Question was put, Whether the Question now stated shall be put in the Court below?

It was resolved in the Affirmative.

*Dissentient,*

Here the Reasons are again expunged.

<i>Denbigh,</i>	<i>Hunsdon,</i>
<i>Caernarvon,</i>	<i>H. London,</i>
<i>Rockefter,</i>	<i>Howard,</i>
<i>Plymouth,</i>	<i>La Warr,</i>
<i>Fersey,</i>	<i>Dartmouth,</i>
<i>Guilford,</i>	<i>Normanby,</i>
<i>Marlborough,</i>	<i>Nottingham,</i>
<i>Tbo. Roffen,</i>	<i>Feverham,</i>
<i>Lexington,</i>	<i>Thanet,</i>
<i>Jonat. Exon,</i>	<i>Peterborough,</i>
<i>Somerset,</i>	<i>Abingdon,</i>
<i>Derby,</i>	<i>Jeffreys,</i>
<i>Scarsdale,</i>	<i>Oxford,</i>
<i>Warrington,</i>	<i>Fermyn,</i>
<i>Weymouth,</i>	<i>Godolphin.</i>
<i>Lindsey,</i>	

Then it was agreed and ordered, That in *Westminster-Hall* the Lord Keeper shall read the Question, and then call the Junior Baron present first, and ask every Lord, Whether Content, or not Content? And that every Lord stand up when called, to give his Vote, Content, or not Content; and that the Lord Keeper having taken their Votes, declare the Majority; And if the Majority be for acquitting the Lord Somers, the Lord

Lord Keeper is to declare it so; and after particularly to the Lord Somers.

*Ordered,*

That Candles be prepared for the House.

Then the House adjourn'd again to *Westminster-Hall*, and being there, the House was resumed, and Proclamation made for Silence, the Lord Keeper put the Question as follows.

That *John Lord Somers* be acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contain'd; and that the said Impeachment be dismissed.

Then the Lord Keeper asked every Lord, Whether Content, or not Content?

The Lord Keeper declared, the Majority was for acquitting; and then declared, That *John Lord Somers* was acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contained; and the said Impeachment was dismissed; and then declared to the Lord Somers, that he was acquitted.

Then the House adjourn'd to the House above, and being come thither, the House was resumed, and the following Orders made.

It is Considered, Ordered, and Adjudged, by the Lords Spiritual and Temporal, in Parliament Assembled, That *John Lord Somers* shall be, and he is hereby acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contained; and that the said Impeachment shall be, and is hereby dismissed.

It is Ordered by the Lords Spiritual and Temporal, in Parliament Assembled, That the Proceedings in this House upon the Impeachments be printed: And that the Lords Committees appointed to consider of the manner of Proceedings on Impeachments, do meet to Morrow at Ten of the Clock, and inspect the Journals, and draw up the Matter relating thereunto, in order to be printed, and report to the House.

*After which Report read,*

*Ordered,*

That the Serjeant do go with the Mace into *Westminster-Hall*, and Courts there, and Court of Request, and Places adjacent, and summon the Members there to attend the Service of the House immediately.

And he went accordingly; and being return'd,

*Resolved,*

That the Lords have refused Justice to the Commons upon the Impeachment against the Lord Somers, by denying them a Committee of both Houses, which was desired by the Commons, as the proper and only Method of settling the necessary Preliminaries, in order to the proceeding to the Trial of the said Lord Somers with Effect: And afterwards, by proceeding to a pretended Trial of the said Lord, which could tend only to protect him from Justice, by colour of an illegal Acquittal; against which Proceedings of the Lords, the Commons do solemnly protest, as being repugnant to the Rules of Justice, and therefore Null and Void.

*Resolved,*

That the House of Lords, by the pretended Trial of *John Lord Somers*, have endeavoured to overturn the Right of Impeachments lodged

in the House of Commons by the ancient Constitution of this Kingdom, for the Safety and Protection of the Commons against the Power of Great Men; and have made an Invasion upon the Liberties of the Subject, by laying a Foundation of Impunity for the greatest Offenders.

*Resolved,*

That all the ill Consequences which may at this Time attend the Delay of the Supplies given by the Commons for preserving the Publick Peace, and maintaining the Balance of *Europe*, by supporting our Allies against the Power of *France*, are to be imputed to those who, to procure an Indemnity for their own enormous Crimes, have used their utmost Endeavours to make a Breach between the Two Houses.

*Ordered,*

That the Message this Day from the Lords be refer'd to the Committee who are appointed to draw up the Articles of Impeachment.

*Ordered,*

That the said Committee do consider of the Proceedings between the Two Houses relating to the impeach'd Lords, and state to this House the Matter of Fact, in order to the Justification of this House in their Proceedings.

A Message from the Lords by Doctor *Newton* and Mr. *Gery*.

Mr. Speaker, In Answer to the Message of the House of Commons this Day, the Lords do acquaint the Commons, That they might have known by the Records of the House of Lords, that the Lords have proceeded to the Trial of the Lord Somers on *Tuesday* last, being the Day appointed; and the Commons not appearing to maintain their Articles against the said Lord, the Lords have, by Judgment of their House, acquitted him of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contained; and have dismissed the said Impeachment.

And the Lords have appointed *Monday* next for the Trial of the Earl of *Orford*; on which Day they will proceed on the said Trial.

The Commons still pressing for a Committee of both Houses (which the Lords never can consent to) for the Reasons already given, their Lordships can infer nothing from their persisting in that Demand, than that they never designed to bring any of their Impeachments to Trial.

As to the Lord *Haverham*, his Answer is now before the House of Commons; and the Lords resolve to do Justice in that Matter.

*Ordered,*

That no Member of this House do presume to appear on *Monday* next at the pretended Trial of the Earl of *Orford*, upon pain of incurring the utmost Displeasure of this House.

The Copy of the Answer of *Charles Lord Halifax*, sent down from the Lords, to the Articles of Impeachment exhibited against him, and the Paper sent down from the Lords, entitled, *The Answer of John Lord Haverham, to the Charge exhibited against him*, being never read in the House of Commons, cannot be printed among the foregoing Proceedings.

They are inserted in the Lords Proceedings, Vol. 5.



## NUMBER XXXV.

*Proceedings in the House of Commons and House of Lords  
relating to James Boucher, Gent.\***Veneris 17 die Decembris, 1703.*

**A** Message from Her Majesty, by Sir *David Mitchell*, Gentleman-Usher of the Black Rod.

Mr. Speaker,

The Queen commands this Honourable House to attend Her Majesty immediately in the House of Peers.

Accordingly Mr. Speaker, with the House, went up to attend Her Majesty, and being return'd, Mr. Speaker reported, That Her Majesty had been pleas'd to give the Royal Assent to *An Act for granting an Aid to Her Majesty, by a Land-Tax*; and afterwards to make a most gracious Speech to both Houses, of which he had desired, and obtained a Copy, which he read to the House, and is as follows, *viz.*

*My Lords and Gentlemen,*

" I Think it proper, upon this Occasion, to acquaint you, That I have had unquestionable Informations of very ill Practices and Designs carried on in *Scotland* by Emisaries from *France*, which might have proved extremely dangerous to the Peace of these Kingdoms; as you will see by the Particulars, which shall be laid before you, as soon as the several Examinations, relating to this Matter, can be fully perfected, and made publick without Prejudice: In the mean Time, I make no Doubt, but by this seasonable Discovery, I shall be able to give such Directions for our Security, as will effectually prevent any ill Consequences from these pernicious Designs.

*Gentlemen of the House of Commons,*

" I am very sensible of your great Readiness and Affection for the Publick Service, by presenting me so early in the Sessions with a considerable Part of your Supplies: I depend entirely upon your continuing with the same Zeal to dispatch the Remainder of them; that so we may be prepared to give the speediest Assistance to our Allies, and to defeat the malicious Designs of our Enemies; who cannot be more industrious to contrive the Ruin of this Kingdom, and of the Protestant Religion, than I shall always be vigilant and careful both for their present Preservation, and for their future Security.

*Resolved, Nemine Contradicente,*

That an humble Address be presented to Her Majesty, returning the Thanks of this House for

Her most gracious Speech from the Throne, and for the communicating the Discovery Her Majesty hath made of the wicked Designs against Her Government; with Assurance, That this House will stand by and support Her Majesty and Her Government against all Pretenders, and all Her Enemies whatsoever.

*Ordered,*

That a Committee be appointed to draw up the said Address; and a Committee was appointed accordingly.

*Ordered,*

That the said Address be drawn up on the said Resolution, and also upon the Debate of the House.

*Sabbati 18 die Decembris, 1703.*

Mr. *Bromley* reported from the Committee, to whom it was referr'd to draw up an Address to be presented to Her Majesty, (according to the Order of Yesterday) That they had drawn up an Address accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards deliver'd in at the Table, where the same was read.

*Resolved, Nemine Contradicente,*

That this House doth agree with the Committee in the said Address.

*Resolved,*

That the said Address be presented to Her Majesty by the whole House.

*Ordered,*

That such Members of this House as are of Her Majesty's most Honourable Privy-Council, do humbly know Her Majesty's Pleasure, when she will be attended by this House.

*Ordered,*

That some Members be appointed to search the Lords Journals, as to their Proceedings in relation to the Examination of any Persons who are discovered to have a Design against Her Majesty's Government.

And they were appointed accordingly.

*The humble Address of the House of Commons to the Queen.*

*Most Gracious Sovereign,*

" **W**E Your Majesty's most dutiful and loyal Subjects, the Commons, in Parliament assembled, do return Your Majesty our most humble and hearty Thanks for Your most gracious Speech from the Throne.

" We are truly sensible of Your Majesty's great Goodness, and of the Confidence You repose in us, by communicating the Discovery of the ill Practices and Designs that have been

\* To be read before his Trial, in Vol. 5. Pag. 510. These Proceedings were published by Order of the Two Houses of Parliament, and shew the Reasons both Houses went upon: Which, with *The Precedents out of the Journals of the House of Lords and House of Commons*, will render them useful to Posterity.

“ carried on in *Scotland*, by Emissaries from  
“ *France*; whereby we have an Opportunity to  
“ repeat our unanimous Resolutions to stand by  
“ and support Your Majesty, and the Succession  
“ in the Protestant Line, as limited by Law,  
“ against all Pretenders, and all Your Majesty’s  
“ Enemies whatsoever.

“ We want Words to express to Your Ma-  
“ jesty, the Detestation we have of any Con-  
“ spiracies and Attempts to disturb the Peace  
“ and Prosperity of Your happy Government;  
“ under which we must think our Security suffi-  
“ ciently provided for, since Your Majesty has  
“ been pleased to give such Directions as may  
“ prevent all ill Consequences from them.

“ It is great Satisfaction to us, to find, That  
“ the Supplies we have already given, are so ac-  
“ ceptable to Your Majesty: We shall go on  
“ with the same Readiness and Zeal to dispatch  
“ the Remainder of them, that we may enable  
“ Your Majesty to give the speedier Assistance  
“ to Your Allies, and to defeat the malicious  
“ Designs of Your Enemies.

“ Your faithful Commons can never have the  
“ least Distrust of Your Majesty’s Vigilance and  
“ Care for the Preservation of the Protestant  
“ Interest in general, of the Monarchy, and the  
“ Church of *England*, as by Law established:  
“ And we humbly beg Leave to assure Your  
“ Majesty, that we will never be discouraged,  
“ but will continue incessant our Endeavours, by  
“ all proper Methods, to transmit them securely  
“ settled to Posterity.

*Luna 20 die Decembris, 1703.*

Mr. *St. John* reported, That the Members  
appointed to search the Lords Journals, as to  
their Proceedings in relation to the Examination  
of any Persons, who are discovered to have a  
Design against Her Majesty’s Government, had  
searched the Lords Journals accordingly; and  
he read in his Place what they had found therein,  
and delivered the same in at the Table, where the  
same was again read.

A Motion being made, and the Question be-  
ing proposed, That an humble Address be pre-  
sented to Her Majesty, setting forth the great  
Concern this House hath for Her Majesty’s Royal  
Prerogative, and the Resolution of this House to  
support the same; and that no Persons accused for  
Crimes, who are Her Majesty’s Prisoners, ought  
to be taken out of the Custody of the Crown,  
without Her Majesty’s Leave; and a Debate  
arising in the House thereupon;

And a Motion being made, and the Question  
being put, That the Debate be adjourned,  
It passed in the Negative.

Then the main Question being put;

*Resolved*, That an humble Address be presented  
to Her Majesty, setting forth the great Concern  
this House hath for Her Majesty’s Royal Prero-  
gative, and the Resolution of this House to sup-  
port the same; and that no Persons accused for  
Crimes, who are Her Majesty’s Prisoners, ought  
to be taken out of the Custody of the Crown,  
without Her Majesty’s Leave.

*Ordered*, That a Committee be appointed to  
draw up the said Address;

And a Committee was appointed accordingly.

*Ordered*, That it be an Instruction to the said  
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Committee, That they do draw up the said  
Address upon the said Resolution, and upon the  
Debate of the House.

*Martis 21 die Decembris, 1703.*

Mr. Speaker reported, That the House did  
Yesterday attend Her Majesty at *St. James’s*,  
and presented to Her their Address; and that  
Her Majesty was pleased to give a most gracious  
Answer, as followeth,

*Gentlemen,*

“ I Am very well pleased with your Assurances  
“ of dispatching the Supplies, and with the  
“ other Parts of this Address, in which you ex-  
“ press so much Duty and Readiness to support,  
“ and to trust me.

“ You may depend upon my Willingness to  
“ join my Endeavours with you, in securing to  
“ Posterity the Protestant Succession in the Mo-  
“ narchy, and the Church of *England*, as it is  
“ established by Law.

Mr. *St. John* reported from the Committee,  
to whom it was referred to draw up an Address  
upon the Resolutions of Yesterday, That they  
had drawn up an Address accordingly, which  
they had directed him to report to the House;  
which he read in his Place, and afterwards de-  
livered in at the Table, where the same was read,  
and (with an Amendment) agreed unto by the  
House.

*Resolved*,

That the said Address be presented to Her  
Majesty by the whole House.

*Ordered*,

That such Members of this House as are of  
Her Majesty’s most Honourable Privy Council,  
do humbly know Her Majesty’s Pleasure, when  
she will be attended by this House.

*Mercurii 22 die Decembris, 1703.*

Mr. Comptroller acquainted the House, That  
Her Majesty having been humbly waited upon  
to know Her Pleasure, when she would be at-  
tended by this House; Her Majesty has been  
pleased to appoint to Morrow at Four o’Clock in  
the Afternoon, at *St. James’s*.

*Jovis 23 die Decembris, 1703.*

*The Humble ADDRESS of the House of Commons  
to the Queen.*

*Most Gracious Sovereign,*

“ WE Your Majesty’s most dutiful and loyal  
“ Subjects, the Commons of *England*, in  
“ Parliament assembled, beg Leave humbly to  
“ lay before Your Majesty the great and just  
“ Concern we are under, to see any Violation of  
“ Your Royal Prerogative.

“ Your faithful Commons believe the Admi-  
“ nistration of the Government best secured when  
“ it is left to Your Majesty, with whom the Law  
“ has entrusted it; and have so firm a Depen-  
“ dence upon Your Majesty’s Affection to Your  
“ People, and Your great Wisdom, that they  
“ can never apprehend so little Danger from any  
“ Conspiracy, as when the Examination thereof  
“ is under Your Majesty’s Directions.



" We are therefore surprized to find, That  
 " when several Persons, suspected of Treasonable  
 " Practices against Your Majesty, were taken  
 " into Custody by Your Messengers, in order to  
 " be examined; the Lords, in Violation of the  
 " known Laws of the Land, have wrested them  
 " out of Your Majesty's Hands, and without  
 " Your Majesty's Leave or Knowledge, in a  
 " most extraordinary Manner, taken the Exa-  
 " mination of them solely to themselves; where-  
 " by a due Enquiry into the evil Practices and  
 " Designs against Your Majesty's Person and Go-  
 " vernment, may, in great measure, be obstructed.  
 " Your loyal Commons do therefore most ear-  
 " nestly desire Your Majesty to suffer no Dimi-  
 " nution of that Prerogative, which, during  
 " Your Majesty's Reign, they are confident will  
 " always be exerted for the Good of Your People.  
 " And we humbly beg Leave to assure Your  
 " Majesty, That as we are resolved by timely  
 " and effectual Supplies to enable Your Majesty  
 " to carry on the War, which You have so glo-  
 " riously begun; so we will, to the utmost of  
 " our Power, support Your Majesty in the Ex-  
 " ercise of Your just Prerogative at Home, and  
 " the asserting of it against all Invasions what-  
 " soever.

*Lunæ 3 die Januarii, 1703.*

Mr. Speaker reported, That he, with the House, did, before the Recess, present to Her Majesty their humble Address of the twenty-first of December last; and that Her Majesty was pleased, thereupon, to give this most gracious Answer.

*Gentlemen,*

" I Have had the Satisfaction to find, that the  
 " Matter which may have occasioned this  
 " Address is now at an End.

" I return you many Thanks for the Concern  
 " you express for my Prerogative; and for your  
 " repeated Assurances of making the Supplies  
 " effectual, which will be greatly for the Honour  
 " and Advantage of the Kingdom.

" I shall be careful not to give way to any In-  
 " vasion of the Prerogative of the Crown, or of  
 " the Rights and Liberties of the People.

Upon this Address of the House of Commons, the House of Lords drew up the following Representation.

*The humble Representation of the Right Honourable the Lords Spiritual and Temporal in Parliament assembled, presented to Her Majesty, on Tuesday the Eighteenth Day of January, 1703; and Her Majesty's most gracious Answer thereunto.\**

*Die Lunæ 17 Januarii, 1703.*

*May it please Your most Excellent Majesty,*

**W**E Your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal in Parliament assembled, find ourselves under an unhappy Necessity of making this our

\* *Die Martis 18 Januarii, 1703.* It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the humble Representation of this House, presented to Her Majesty this Day, and Her Majesty's most gracious Answer thereunto, shall be forthwith printed and published.

humble Application to the Throne, upon Occasion of an Address presented to Your Majesty by the House of Commons, the twenty-third Day of December last, and since that Time published to the whole Nation in Print; by which the House of Lords is charged with the Violation of Your Royal Prerogative, and of the known Laws of the Land; with wresting Persons suspected of Treasonable Practices, and taken into Custody by Messengers, out of Your Majesty's Hands, without Your Leave or Knowledge, and in a most extraordinary Manner taking the Examination of them solely to themselves; whereby a due Enquiry into the evil Practices and Designs against Your Majesty's Person and Government might in great measure be obstructed. And they conclude their Address by most earnestly desiring Your Majesty to suffer no Diminution of Your Prerogative, and promise to support You in the asserting it against all Invasions whatsoever. It is not possible for us to remain silent under this heavy Charge, so unjustly, and without the least Ground or Colour to be fixed upon the whole Body of the Peers, which tending directly to create an ill Opinion of us in Your Majesty, puts us under an inevitable Necessity of vindicating both the Legality, and the dutiful Manner of our Proceeding.

The Expressions in the Address of the House of Commons are so very harsh and undecent, that we may truly affirm, the like were never used of the House of Peers in any Age; not even by that Assembly, which, under the Name of the House of Commons, took upon them not only to abolish the House of Lords, but to destroy the Monarchy. We shall carefully avoid making Returns of that kind: We consider too much what we owe to ourselves; and we know too well the profound Respect due to Your Royal Person, to let any Provocation transport us so, as to use Words unfit to be offer'd by us to our Sovereign.

The Matter of this Address is no less injurious to us than the Terms; there was not the least Occasion for a just Objection to any Part of our Conduct in that Business to which the Address relates. The Proceeding was strictly justifiable by the known Laws and Customs of Parliament; it was carried on with the utmost Respect to Your Majesty, and with true Zeal for the Safety of Your Person and Government; all that was done was agreed to by the concurrent Opinion of the House, without the least Objection from any of our Members, who have the Honour of serving Your Majesty in Your great Offices and Employments.

We humbly represent to Your Majesty, That, by the known Laws and Custom of Parliaments, the House of Peers has an undoubted Right, in Cases where they conceive it to be for the Good and Safety of Your Majesty and the Kingdom, to take Examinations of Persons charged with criminal Matters, whether such Persons be then in Custody or not; and also to order the Persons so to be examined to be taken into Custody of Your Majesty's sworn Officers, attending the House during such Examinations, or to commit

*Matth. Johnson, Cleric' Parliamentor'*  
 them

them to any other safe Custody that they shall think proper; and to restrain others, if they see Cause, from having Access to, or Communication with them: The House of Lords has exercised this Right from Time to Time, as Occasions have required, without Objection. Our Records are fill'd with Precedents which warrant our Claim in every Part of it; and we presume to affirm to Your Majesty, That the drawing this Right into Question, at any Time, cannot but be of dangerous Consequence to the Liberties and Safety of the People, and to the Constitution of the Government, as tending to avoid, or render in great measure ineffectual, the Enquiries of Parliaments, which are so absolutely necessary, especially where many and great Persons are engaged in dangerous Designs against the Government; or where ill Ministers abuse their Favour towards the oppressing or enslaving of the People. Your Majesty's Wisdom and Goodness make us secure at present against all Influences of that kind, and we unanimously and heartily pray we may long enjoy the Blessing of Your Reign. But if it happens in future Times, that ill Men should gain too great a Degree of Favour with our Princes, how easy will it be for them to stifle or defeat all Parliamentary Enquiries into their Crimes? For if the being in Prison, or in the Hands of a Messenger, will protect Men from being examined in the House of Lords, or from being put into the Custody of the proper Officers of the House, during the Examination, and debar'd from conversing with others; it will certainly be always in the Power of Favourites to cause those who can be Witnesses against them, as well as the Accomplices of their Designs, to be taken into Custody. And if Persons in Custody are out of the Reach of the House of Lords, who are the Hereditary Councillors of the Crown, and in whom a judicial Power is lodged by the Constitution; it is not to be imagined that the Commons can pretend to a greater Power of examining, committing, or restraining them.

No House of Commons, 'till now, has given Countenance to this dangerous Opinion, which does so directly tend to the rendering ill Ministers safe from the Examination of Parliaments: And we are perswaded, no House of Commons hereafter will assert such a Notion, because they are not wont easily to part with a Power they have assumed; and it is certain, that they have several Times taken upon them to exercise an Authority like that which they have so severely reflected on in their Address.

This Consideration gave us the greater Astonishment, to find our Proceedings represented in the strange Terms of wresting Prisoners out of Your Majesty's Hands, and taking the Examination of them solely to ourselves. We believe the ordering Persons to be examined in that High Court, where Your Majesty is always present, in Consideration of Law, and in that great Council where You may be present in Your Royal Person, as often as You Please, will never be thought an Exclusion of Your Majesty from the Examinations, if that was intended to be insinuated by saying, we had taken the Examinations solely to ourselves. Having thus laid before Your Majesty what it is we claim, and must insist on, as the indisputable Right of the House of Peers; which was never thought, in the Time

of Your Royal Ancestors, to be prejudicial to the just Prerogatives of the Crown, and which is manifestly necessary for the securing the Liberties of Your People, whereof we are assured Your Majesty will have an equal Care; We humbly beg Leave to lay before You a short State of the particular Matter of Fact relating to these Prisoners, not doubting, but when the whole Proceeding is known to Your Majesty, it will be approved not only as lawful, but every way respectful to Your Majesty.

On *Tuesday* the 14th of *December* the House of Lords was inform'd, that several Persons had been seized by the Custom-House Officers on the Coast of *Suffex*, as they came from *France*, and that amongst them there was one *Boucher*, who was capable of making considerable Discoveries, having been in Arms in the *French* Service for many Years, and Gentleman of the Horse and Aid de Camp to the late Duke of *Berwick*, who stands attainted of High Treason, and who had been secretly in *England* several Times before; that it was probable, if he was strictly examined, he might be brought to confess, since he saw his Life in apparent Danger; but that he was a bold Man, and likely to attempt an Escape on that very Account, if he was not carefully look'd after: And the House was also told, that there was a general Remissness both in the taking, searching, and looking to such Prisoners, which did afterwards appear very evidently in the Examinations that were taken. Upon this Information, the Earl of *Nottingham*, Your Majesty's Principal Secretary of State, acquainted the House, that he had not heard of *Boucher's* Name particularly, but had sent Messengers to bring one *Ogilby*, and the other Prisoners who had been apprehended by the Custom-House Officers, to Town, and that he believed the Messengers would do their Duty, but he would not be answerable for them.

After this Account of the Prisoners, and of what had been done in order to secure them, the House thought themselves obliged in Duty to Your Majesty, and for the Publick Safety, at a Time when the Kingdom is engaged in an open War with *France*, and that there are too just Grounds to apprehend the dangerous Practices of *French* Emissaries; to make an humble Address to Your Majesty, that particular Care might be taken for securing the Persons of *Boucher*, and of those who were taken with him, and that none might be suffered to speak with them, 'till they were examined.

The next Day, Your Majesty's gracious Answer to this Address was reported to the House, That Care had been taken to secure the Prisoners, and that Your Majesty would give Orders, that no body should speak with them till they were examined. Thereupon, the Lords enter'd into a farther Consideration of the Importance of this Matter; and conceiving nothing to be more likely to bring Prisoners, who had forfeited their Lives, to a full Discovery of the Truth, than to find themselves under the Enquiry of a Parliament, they thought it would be of Publick Service for them to take the Examinations of these Persons; and accordingly an Order was made, that no Persons should speak with the Prisoners, till they had appeared at the Bar of the House.

On the sixteenth Day, the Earl of *Nottingham* informing



informing the House of Lords, that the Prisoners were brought to Town; the Usher of the Black Rod was ordered to take them into his Custody, in order to their Examination, and to keep them separate, and in close Custody (as Your Majesty had before directed;) and it being thought most proper, from the Nature of the Thing, that the Examination should be by a Committee of Lords, rather than by the whole House, it was resolved accordingly.

We beg Leave to mention to Your Majesty a Matter of Fact which satisfied the Lords, that their Resolution to take the Examinations of *Boucher*, and the Persons apprehended with him, was neither unknown nor disagreeable to Your Majesty: On the same Day when that was order'd, being the fifteenth of *December*, the Lords resolved to examine Sir *John Maclean*, a very dangerous Person, as was represented to the House, who then stood committed in the Hands of a Messenger; and for that Purpose order'd him to be brought to the House the next Day, having as they then thought very good Grounds to believe it might prove of great Service to Your Majesty. Sir *John Maclean* was brought to the House, according to the Order, but Your Majesty being pleased so far to take Notice of this Order, as to signify to the House by the Lord Steward, That Sir *John Maclean* had been in part examined already, and that Your Majesty thought it not proper to have that Business taken out of the way of Examination it was then in, but that Your Majesty would, in a short Time, communicate it to the House; the Lords immediately acquiesced in Your Majesty's Opinion, and sent back Sir *John Maclean* to the Place from whence he was brought. It was with this Disposition of Mind the Lords acted in this whole Matter; and if Your Majesty, who, no doubt, had the same Notice of both Orders, had thought any other Method of the Examination of *Boucher*, and the Persons taken with him, more proper than that of the Lords; they had Reason to conclude Your Majesty would have intimated it at the same time, and most certainly the House would have had a like Deference for Your Royal Judgment in that Instance also.

The Lords Committees\* appointed to examine the Prisoners, proceeded with all possible Dispatch, and made their Report to the House on the twenty-first of *December*; upon Consideration of the Report, the House found it requisite to commit *Boucher* to the Prison of *Newgate*, for High Treason; and the Lords Committees having submitted to the Judgment of the House, whether several Parts of the Examinations, referred to in their Report, should be laid open to the House, or put into any other Way of being farther enquired into, or prosecuted; the House, out of a full Assurance they had, that, when the Matter of Fact should be laid before Your Majesty, You would certainly give such Orders thereupon, as were every way suitable to Your Royal Prudence, and tender Care of the Publick Safety; did unanimously resolve, without so much as suffering those Parts of the Report to be laid open to the House, that an humble

Address should be made from the House to Your Majesty by the Lord Steward and the Duke of *Somerset*, (Two of the Lords Committees, to whom the Examination had been refer'd) laying before Your Majesty the whole Report, with all Matters relating thereto; and humbly desiring Your Majesty to give Order, that *Boucher* should be prosecuted by Mr. Attorney-General for High Treason; and that as to the Commitment, Prosecution, or Discharge of the other Prisoners mentioned in the Report, You would be pleased to give such Directions, as should seem most proper to Your Royal Wisdom. Thus, as the whole Affair was enter'd upon out of Zeal for Your Majesty's Preservation, and the Safety of the Kingdom, and was carried on and concluded with all possible Respect to You; so we had the Comfort to rest assured, that our Behaviour was no less graciously accepted by Your Majesty, from the Answer You were pleased to make the same Day to our last Address on this Subject, and which was reported to us on the twenty-second of *December*, by the Duke of *Somerset*, whereby Your Majesty was pleased to signify to the House, with Your accustomed Goodness, that You would give Order for every Thing as the Lords had desired.

Madam, this is a true and just Account of our Proceedings, which have been so strangely misrepresented, and to which no Exception can possibly be taken by any Persons rightly inform'd. For as we had Your Royal Approbation of all that was done; so the House of Commons could have had no Pretence of Objection, if they had taken the usual Parliamentary Methods of desiring to be inform'd of what we had done, and of the Grounds of our Proceedings, before they had approached Your Majesty with such a Representation of them.

Their carrying this unprecedented Address to Your Majesty, in so hasty a Manner, gives us almost as great Trouble as the hard Usage we find in it. The ancient, known, and indeed only effectual Method of preserving a good Correspondence between the Two Houses of Parliament, has been by Conferences. If at any Time either House conceived they had a reasonable Ground to object against the Proceedings of the other, Conferences have been desired, and the Matter in Debate between them fairly discuss'd, and thereby Mistakes have been clear'd for the most part, and a good Understanding cultivated, and a mutual Respect preserved; which is always highly requisite in the nature of our Constitution, but more especially necessary in this Time of War and Danger.

Had the House of Commons thought fit to have pursued this Method upon this Occasion; we should have been able to have given them entire Satisfaction, not only of the Lawfulness of all we had done, but of the just and weighty Grounds upon which we took the Examinations of these Persons into our own Hands: Or at least, if they could have convinced us of any Mistake, we should have given them any reasonable Satisfaction.

But, without making any such previous Step, the House of Commons have made an Appeal

\* The Committee of Lords, mentioned in this Representation, who were appointed to examine the Prisoners brought out of *Suffex*, were *Seven*, viz. the Dukes of *Devonshire* and *Somerset*, the Earls of *Sunderland* and *Scarborough*, the Lords *Townshend*, *Wharton*, and *Somers*. They were chosen in the House by Ballot.



directly to the Throne against the House of Lords, and charged them, though most unjustly, with Attempts of the highest Nature. Nothing like this was ever done before, and out of our hearty Concern for the Preservation of our happy Constitution, we hope the same Thing will never be done again. We know Your Royal Heart is unmoveably fixed on preserving the Liberties of Your People, and transmitting them entire to Posterity; but if in After-Times the Houses of Parliament should be appealing against one another to the Crown, (for if such a Course be justifiable in the House of Commons, the same Method may be taken by the Lords) as Your Majesty is now sensible how great Difficulties it necessarily brings upon a good Prince; so it is easy to foresee (and we cannot think of it without Terror) how fatal the Consequences may be in the Reign of an ill-designing Prince, and what Advantages may be taken from it, for utterly subverting the best order'd Form of Government in the World. There are Examples Abroad,\* where Proceedings of this kind have ended in the Overthrow of the Liberties of the People, which makes us the more apprehend the Beginning of them among ourselves. Your Majesty's great Judgment cannot but readily discern, whether it does naturally tend for one House of Parliament to be exciting and earnestly desiring the Sovereign to exert a real or supposed Prerogative against the other House. It is not easy to imagine what the Commons could expect of Your Majesty from such an Application; the Lords have never entertain'd a Thought of using this dangerous Method, whatever Occasion may have been given within the Compass of late Years. And we promise Your Majesty we will always endeavour to preserve a good Understanding with the House of Commons, and shall never think it too dear to procure that Union at any Rate, unless that of delivering up those Rights and Powers which are lodged in us by the Law, and without which, the Constitution cannot subsist.

We shall never be guilty of the Presumption of prescribing to Your Majesty when or against whom You should exert Your Prerogative; but we will be always ready to assist You in the Support of all the just Rights of the Crown, as well as in maintaining the Liberties of the Subject, which we know are no less dear to Your Majesty.

It may with Modesty and Truth be affirm'd, that the Lords have, in all Times, been the surest and most natural Bulwark of the Prerogatives of the Crown, they being (as Your Royal Grandfather, of ever blessed Memory, was pleas'd to express it) an excellent Screen and Bank between the Prince and the People, to assist each against any Encroachment of the other.

We will never contribute by any Act of ours to the Diminution of the Rights of the Crown, nor, as far as we are able, will suffer it in others. We cannot act otherwise, without hurting ourselves in the highest Degree; being thoroughly convinced, that the Preservation of the legal Prerogative is not only the surest Way to secure our own Privileges, but of absolute Necessity, for the happy and rightful Administration of the Government. And we hope the House of Commons will, in all Times to come, speak and act

with that Regard to the Prerogative which they seem to have taken up lately.

There remains one Particular more, which we will only name to Your Majesty, because we rest satisfied it cannot have Weight any where; that is, the Insinuation in the Address, as if the Examination of these Prisoners by the Lords, was in order to obstruct the Enquiry into the Designs against Your Majesty's Person and Government; or at least, that it was likely to produce such an Effect. Our dutiful Zeal for Your Majesty's Government, and our warm Concern to discover all Designs, and oppose all Practices against it, are too well known to the World, that any Suggestions of that Sort should make the least Impression to our Disadvantage; and we are very sure, 'twas no Suspicion of that Nature which gave the true Rise to this very sharp Address. It is easy to determine, whether a hearty and forward Undertaking to search into the Designs of Your Enemies, or the seeking Occasion to object to, and interrupt such Endeavours, be most likely to obstruct the Discovery of the pernicious Practices of Traitors.

*Most Gracious Sovereign,*

We most humbly ask Pardon for presuming to give Your Majesty the Trouble of this long Representation, which has proceeded from the passionate Concern we have to stand not only acquitted, but entirely approved in the Judgment of so excellent a Queen, and so justly beloved of all her Subjects.

We depend upon Your Justice as well as Your Goodness, that nothing can do us Prejudice (from whatsoever Hands it comes) in Your Royal Opinion, while we continue to act in that Station where we are placed by the Form of the *English* Government, according to the Laws and Customs of Parliament, with all imaginable Respect and Duty to Your Self, and all possible Zeal for the Safety and Happiness of Your Kingdom.

Give us Leave to conclude this our humble Address with this firm Promise, that no Dangers, no Reproaches, nor any Artifices whatsoever, shall deter or divert us from using our utmost Endeavours, from Time to Time, in discovering and opposing all Contrivances and Attempts against Your Royal Person and Government, and the Protestant Succession, as by Law establish'd.

*Her Majesty's most Gracious ANSWER to the Representation.*

*My Lords,*

" I Am very sorry for any Misunderstandings that happen between the Two Houses of Parliament, which are so inconvenient for the Publick Service, and so uneasy to me, that I cannot but take Notice with Satisfaction of the Assurances you give me, that you will carefully avoid all Occasions of them.

" I thank you for the Concern you express for the Rights of the Crown, and for my Prerogative; which I shall never exert so willingly as for the Good of my Subjects, and the Protection of their Liberties.



*Sabbati 22 die Januarii, 1703.*

The Commons order'd, That some of their Members be appointed to search the Journals of the House of Lords, touching their Proceedings upon the late Address of this House to Her Majesty, and their Representation thereupon; and also to search Precedents concerning Commitments by the House of Lords, in Cases where the Person has been in the Custody of the Crown, and report the same to the House; and several Members were appointed accordingly.

*Sabbati 29 die Januarii, 1703.*

Mr. *Tuke* reported, That the Members appointed to search the Journals of the House of Lords, touching their Proceedings upon the late Address of this House to Her Majesty, and the Representation thereupon; and also to search Precedents, concerning Commitments by the House of Lords, in Cases where Persons have been in the Custody of the Crown, had searched the same accordingly; and he read in his Place what they found therein, and afterwards delivered the same in at the Table.

*Resolved*, That this House will, upon *Tuesday* Morning next, take the said Report into Consideration.

*Martis 1 die Februarii, 1703.*

*Resolved*, That this House will, upon *Thursday* Morning next, take into Consideration the Report of the Journal of the House of Lords, with relation to the Address of this House to Her Majesty, and the Lords Representation.

*Jovis 3 die Februarii, 1703.*

The Report of the Journal of the House of Lords, relating to the Address of this House, and the Representation of the House of Lords, was read.

*Resolved*, That an humble Address be presented to Her Majesty, to clear this House from the Misrepresentation of the House of Lords, in their Representation presented to Her Majesty.

*Ordered*, That a Committee be appointed to draw up the said Address.

And a Committee was appointed accordingly.

*Veneris 18 die Februarii, 1703.*

Mr. *Grawville* reported from the Committee appointed to draw up an humble Address, to be presented to Her Majesty, to clear this House from the Misrepresentation of the House of Lords, in their Representation presented to Her Majesty, That they had drawn up an Address accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards deliver'd in at the Table, where the same was read, and (with an Amendment) agreed unto by the House.

*Resolved*, That the said Address be presented to Her Majesty by the whole House.

*Ordered*, That such Members of this House as are of Her Majesty's most Honourable Privy-Council, do humbly know Her Majesty's Pleasure, when she will be attended by this House.

*Lune 21 die Februarii, 1703.*

Mr. Secretary *Hedges* acquainted the House, That Her Majesty having been (according to

Order) waited upon, to know when she would be attended by this House, Her Majesty has been pleased to appoint this Afternoon, at Four of the Clock, at St. James's.

*The humble ADDRESS of the House of Commons to the Queen.*

*Most Gracious Sovereign,*

YOUR Majesty having with great Goodness declared from the Throne to Your Parliament, That divers ill Practices and Designs had been carried on in *Scotland*, by Emissaries from *France*, which might have proved extremely dangerous to the Peace of these Kingdoms; and that You would lay the Particulars before Your Parliament, as soon as the several Examinations could be fully perfected, and made publick without Prejudice: We Your Majesty's most dutiful and loyal Commons, resting secure and satisfied in Your Majesty's great Wisdom and Care, most thankfully acknowledged the Confidence You have been pleased to repose in us.

But finding upon the Lords Journals, That their Lordships, the very same Day, made two Orders, one to remove Your Majesty's Prisoners out of Your Custody into their own, and the other to commit their Examination solely to a Committee of seven Lords, chosen and appointed by themselves; by which Your Majesty seem'd excluded from any Power over the said Prisoners:

Your loyal Commons, justly sensible of the dangerous Consequences of such Proceedings, thought themselves obliged to declare their Concern at this Violation of Your Royal Prerogative, and the known Laws of the Land, in an humble Address presented to Your Majesty.

Your faithful Commons are well assured, when this Matter comes to be rightly stated and understood, a Zeal so well intended, and so well grounded, will rather be imputed to them as meritorious, than liable to Exception; and therefore, since their humble Address has been so artfully misrepresented by the Lords in their late Representation, presented to Your Majesty on *Tuesday* the 18th of *January*, and published and spread with unusual Industry through all Parts of the Kingdom, they look upon themselves under an indispensable Necessity of appearing before Your Majesty in their own Justification.

Their Lordships think fit to take Offence at the Manner and Words of our Address, and accompany this Exception with Reflections and Insinuations more harsh and more odious than the most opprobrious Language: But as we made use of no Terms but what were suitable to the Occasion, so it will appear by Precedents, that the same have been frequently and reciprocally used by both Houses to each other; nor could the Commons, in respect to Your Majesty, assert Your Royal Prerogative in Words of less Force than those in which they have vindicated their own Privileges.

Whatever Expressions our Zeal for Your Majesty, and the Publick, might have inspired, we could never have offered to our Sovereign so ungrateful a Remembrance as the Destruction of the Monarchy, by a detestable Assembly, composed of Members of both Houses, who being alike Partakers in the Guilt, ought equally to share the Reproach.

With

With much more Reason might we observe, both on Behalf of Your Majesty and the Commons, that their Lordships, not contented with preferring their own Examinations to Yours, not contented with excluding Your Majesty and the Commons, to whom Parliamentary Enquiries most properly belong, appropriate to their House only, even in their Application to their Sovereign, the Name of a Parliament; an Instance not to be parallel'd, unless by that very Assembly that subverted the Monarchy.

It is not the Question at present, as stated by the Lords, Whether their Lordships have a Power of taking into Custody, while under Examination, Persons accused of Criminal Matters, cognisable in Parliament? But that their Lordships have a Right to take the Prisoners of the Crown, and the Examination of them solely into their own Hands, without Your Majesty's Consent, and in such a Manner as must necessarily prove an Exclusion of Your Majesty, and this House, is the Proposition Your Commons deny, and for which their Lordships have produced no Precedent.

This unhappy Occasion has been at the same Time accompanied with the most surprising Instances of Contradiction, and Counter-Orders to Your Majesty, both preceding and subsequent to it, but especially on the 29th of January last, when Your Majesty, with Your accustomed Goodness, communicated to the Lords the Papers relating to the *Scotch* Conspiracy, with an Exception only of some Matters, not yet proper to be made publick, without preventing a further Discovery of Secrets of greater Importance, with which Your Majesty assured their Lordships they should also be acquainted, as soon as it could be done without Prejudice. However, their Lordships, upon what Provocation, or for what Reason, no where appears, immediately address'd to Your Majesty, pressing You to lay before them the whole Matter, and all Papers relating thereunto; by which Your Majesty was put under a Necessity, either to give their Lordships a Refusal, or to comply with their unexpected Importunity, to the endangering the publick Service. These Proceedings, so extraordinary in their Nature and in their Manner, could not but sensibly affect Your faithful Commons, whose earnest Desire it is, to see both Your Houses of Parliament, and the whole Body of Your People, entirely agreed to pay the Deference due to Your Majesty's Wisdom, to confide in Your Care, and to promote and maintain Your Honour and Dignity.

Their Lordships, not satisfied with assuming this unprecedented Power, have endeavour'd, with a great deal of Art, to persuade Your Majesty of the Necessity of it, to prevent the Designs of ill Princes, and their Favourites: But, as it may seem unreasonable for their Lordships to begin to practise upon a good Prince, such Methods as are pretended only to be needful against an ill one; so it is our humble Opinion, That the Danger might be much greater, admitting this Precedent. Should the Lords combine to defend one another from Enquiries and Prosecutions, all Parliamentary Impeachments might be eluded, secret Designs carried on, the Innocent aspersed without Reparation, and the Guilty acquitted without Trial. Nor is that In-

stance, mentioned by the Lords, an unseasonable Caution, since that Revolution in a neighbouring Kingdom, alluded to by their Lordships, was occasioned by the Incroachments of a prevailing Cabal of Lords, who endeavouring to enslave the People, and to betray their King and their Country to a Foreign Power, obliged the Church and the Commons to unite in the publick Defence.

Your faithful Commons have found themselves so happy under Your Majesty's Administration, that they please themselves with more agreeable Prospects, and renouncing such Examples of unseasonable Jealousies and Fears, most thankfully receive the Blessings of Your Reign: Nor could they have made a more grateful Return for Your Majesty's generous Protection of their Liberties, than by a suitable Concern for Your Prerogative.

If their Lordships had consulted their own Journals, with the same Care that we always take to be rightly informed, they would hardly have affirmed, That a direct Appeal to the Throne, without any previous Desire of Conference, had been an unprecedented Practice: Their Books are filled with Variety of Instances to the contrary; but without examining their Books, it seems very surprising, that their Lordships could so soon forget their Address presented to Your Majesty the last Session, on Behalf of the Lord Bishop of *Worcester*, and their Address to the late King, on Behalf of *William* Earl of *Portland*, *Edward* Earl of *Orford*, *John* Lord *Somers*, and *Charles* Lord *Halifax*, impeached by the Commons of High Crimes and Misdemeanours: And when this House formerly expostulated with the House of Lords, for proceeding in the very same Method of which they now complain, their Lordships made a most solemn Declaration, in these Words;

*That they must ever assert a Liberty in their House, to apply to the Throne by themselves, for the doing any Thing warranted by Law, &c.*

Nor can the Lords, we presume, upon second Reflection, deny the Commons the same Liberty, which their Lordships themselves have so strongly asserted, and so frequently practised.

Your loyal Commons sincerely concur with their Lordships, in declaring, That we will never contribute, by any Act of ours, to the Diminution of the Rights of the Crown, and that we will not suffer it in others. Your Majesty, their Lordships, and the whole World, may judge, from the Example we have now given, if thier Lordships do truly wish the House of Commons may, in all Times to come, speak and act with that Regard to the Prerogative, which they allow us the Honour to have now taken up; we shall be very unfortunate to continue under their Displeasure at the same Time when they seem to hope, that those who succeed us will take Pattern by us.

We wish their Lordships also, on their Part, may continue, in all Times to come, to speak with that Regard to Parliamentary Impeachments, which they seem so lately to have taken up; since we have Reason to apprehend, that the Misunderstandings which have of late Years arisen between the Two Houses, have been principally owing to the Artifices of some particular Persons



Persons among themselves, whom the Commons thought it their Duty, for the publick Safety, to bring to Justice. How much more difficult will all such Endeavours be render'd, should their Lordships be once admitted sole Examiners of Accusations against each other, as they are already sole Judges?

We are accused, but most unjustly, of exciting and earnestly desiring Your Majesty to exert Your Prerogative against the House of Lords: We appeal to the Words of our Address, if it is possible naturally to impose any such Sense upon any Expression that is there. We are sorry their Lordships should descend so low as to the straining and wresting of Words, by which they rather discover an unfortunate Inclination to make us seem culpable upon any Terms, than that they in Truth believe us so. We know how vain and how fruitless an Application it would be, to excite Your Majesty to any Abuse of Your Power, which we are convinced You will always exercise for the general Good; and so far are Your Commons from entertaining any such Desire, that we heartily wish to see a good Correspondence preserved between the Two Houses; nor would forbear to purchase it at any Rate, except the giving up the Rights of Your Majesty, by whom we are protected, and the Liberties and Properties of the People, by whom we are entrusted.

These few Instances, so plain, and so uncontestable, we presume, will be sufficient, without trespassing much longer upon Your Majesty's Time, to discredit whatever else has been alledged to create in Your Majesty, and those we represent, an ill Opinion of us. We have been careful and industrious to avoid, as far as was consistent with our necessary Justification, all Occasion of reviving Animosities; and how great soever the Provocation has been, Your Majesty having declared how uneasy You are under such Misunderstandings, we shall make no Difficulty to lay aside our Resentments, who shall always be ready to sacrifice our Lives and Fortunes to Your Quiet and Service: Nor can we doubt but we must stand fully acquitted to the whole World, and especially to Your Majesty; since the Zeal that we have shewn, and the Reproaches that we have born, have been owing to no other Cause but the Defence of an excellent Queen, in whose Hands God Almighty has placed the Executive Authority over these Nations, which Authority it has been the only Endeavour of Your faithful Commons to preserve as entire as our Laws and Constitution allow.

*May it please Your most Sacred Majesty,*

It is with the deepest Concern, and a Grief not to be expressed, that Your dutiful and loyal Commons have found themselves engaged in Disputes of this Nature, by which they have been so unseasonably interrupted in finishing the Supplies, and other Matters of the highest Importance. How zealously they have applied themselves to the Discharge of their Duty, appears from their having already presented Your Majesty with the greatest part of their Aids, with a Dispatch and Unanimity beyond Example: Nor could the few Bills yet depending have met the least Obstruction or Delay, but from the indispensable Necessity of vindicating Your Majesty's Royal Prerogative, the Privileges of our own

House, and the Rights and Liberties of all the Commons of *England*, in several Instances invaded almost at the same Time; we wish there may have been more of Mistake than Design in those who have created these unhappy Differences: However, we desire the Remembrance may be henceforth blotted out, and that there may remain no other Impression in the Hearts both of Lords and Commons, than a sincere and passionate Concern for Your Majesty's Welfare and Glory; nor any other Contention ever hereafter arise, but by whom the Publick Good shall be best advanced, the Protestant Succession, and the Church of *England*, best secured, and the just Rights and Prerogatives of the Crown best supported.

*Martis 22 die Februarii, 1703.*

Mr. Speaker reported, That he, with the House, did Yesterday present their humble Address to Her Majesty, and that Her Majesty did thereupon give the gracious Answer following.

*Gentlemen,*

" I Return you many Thanks for the great  
" Concern you express for me and my just  
" Rights. Your Dispatch of the Supplies is a  
" great Advantage to the Publick Service; and  
" I am very well pleased with the Assurances you  
" give me, of your Care to avoid any Occasion  
" of Difference between the Two Houses, especially at this Time, when there is so apparent  
" a Necessity of strengthening ourselves against  
" the malicious Designs of our Enemies.

*Jovis 24 die Februarii, 1703.*

Ordered, That some Members be appointed to search the Journals of the House of Lords, what Proceedings have been since the last Report to this House, upon the Papers communicated to the Lords by Her Majesty, relating to the Conspiracy; and several Members were appointed accordingly.

*Lunæ 28 die Februarii, 1703.*

Sir *Humphry Mackworth* reported, That the Members appointed had been to inspect the Journals of the House of Lords, what Proceedings had been since the last Report to this House, upon the Papers communicated to the Lords by Her Majesty, relating to the Conspiracy; but that they did not find any Proceedings as yet enter'd in their Journals; but that out of the Papers for making up the same, they had taken Copies of the Proceedings they found therein, which he read in his Place, and afterwards deliver'd in at the Table, where the same were read.

Ordered, That the Consideration of the said Report be referr'd to the Committee of the whole House, who are to consider of the Papers communicated by Her Majesty to this House, relating to the Treasonable Correspondence carried on with *St. Germain's*, and the Court of *France*.

*Martis 29 die Februarii, 1703.*

Mr. *Freeman* (according to Order) reported from the Committee of the whole House, to whom it was referred to consider of the Papers com-

communicated by Her Majesty to this House; relating to the Treasonable Correspondence carried on with St. Germain's, and the Court of France, the Resolution which they had directed him to report to the House; which he read in his Place, and afterwards deliver'd in at the Table, where the same was read; and is as followeth.

*Resolved*, That it is the Opinion of this Committee, That the House be moved, that an humble Address be presented to Her Majesty; That she will be pleased to re-assume the just Exercise of Her Prerogative; and take to Herself the Examination of the Matters relating to the Conspiracy, communicated to this House by Her Majesty; and to give Assurance, that they will defend Her Majesty's sacred Person and Government, against all Persons concerned in the said Conspiracy, and all other Conspirators whatsoever: And to declare, That the establishing of a Committee of *Seven Lords*, for the sole Examination of the said Conspiracy, is of dangerous Consequence, and may tend to the Subversion of the Government.

*Resolved*, That the House doth agree with the Committee, That an humble Address be presented to Her Majesty, That she will be pleased to re-assume the just Exercise of Her Prerogative, and take to Herself the Examination of the Matters relating to the Conspiracy, communicated to this House by Her Majesty; and to give Assurance, that they will defend Her Majesty's sacred Person and Government, against all Persons concern'd in the said Conspiracy, and all other Conspirators whatsoever; and to declare, That the establishing of a Committee of *Seven Lords*, for the sole Examination of the said Conspiracy, is of dangerous Consequence; and may tend to the Subversion of the Government.

*Resolved*, That the said Resolution be presented to Her Majesty by the whole House.

*Ordered*, That such Members of this House as are of Her Majesty's most Honourable Privy-Council, do humbly know Her Majesty's Pleasure, when she will be attended by this House.

*Mercurii 1 die Martii, 1703.*

Mr. Secretary *Hedges* reported, That Her Majesty had been pleased to appoint to be attended by this House, to Morrow, at Four of the Clock in the Afternoon, at St. James's.

*Veneris 3 die Martii, 1703.*

Mr. Speaker reported, That he, with the House, did Yesterday present their humble Address of the 29th of *February* last to Her Majesty, and that thereupon, Her Majesty was pleased to give the gracious Answer following.

*Gentlemen,*

"THE great Marks of Trust and Confidence, which you have given me in this Address, are very acceptable to me.

"I thank you for your Advice, and shall constantly exercise my just Prerogative for the Security and Satisfaction of my Subjects.

Upon these Proceedings of the House of Commons, the House of Lords; the 28th of *March*; drew up another Representation; which they presented to Her Majesty, and is as follows:

*The humble Representation, or Address; of the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled, presented to Her Majesty, on Friday the Thirty-first Day of March, 1704. and Her Majesty's most gracious Answer thereunto. †*

*Die Martis 28 Martii, 1704.*

*May it please Your most Excellent Majesty,*

WE the Lords Spiritual and Temporal, in Parliament assembled, found ourselves obliged (tho' with great Unwillingness) to make an humble Representation to Your Majesty, on the 18th of *January* last, of the Injustice done to us by the House of Commons; and it is with the utmost Reluctance we are brought to give Your Majesty a second Trouble upon the like unhappy Occasion. This appears by our Silence after the Address of the House of Commons presented to Your Majesty the *Twenty-first of February*: For though that Paper be, in Effect, but one continued Misrepresentation of our Words, and our Proceedings, yet we thought ourselves secure in Your Majesty's great Judgment, which would discern where the Truth lay, through all the Colours made use of to disguise it. And we were willing to hope, that a Moderation which was so little deserved, could not but have a good Effect upon the House of Commons; but the Votes of the 29th of *February*, which they laid before Your Majesty, have convinced us of our Mistake, and made it impossible for us to flatter ourselves longer with any such Expectation: They continue to misrepresent our Proceedings, and to solicit the Throne against us, and thereby put us upon an absolute Necessity of doing ourselves Justice, in laying a true State of Things before Your Majesty. When we observe, that the first Address of the House of Commons was ordered the next Day after we entered upon the Examination of *Boucher*; That on the *Third of February*, when we appointed a Day for taking the Papers relating to the Conspiracy into Consideration, the House of Commons appointed a Committee to draw up the Address against us, presented to Your Majesty on the 21st, which was the Day our Committee reported *Keith's* Examination; And that their Votes of the 29th came from a Committee appointed to consider of the Papers communicated to them, the same Day we made our Address to Your Majesty to issue out a Proclamation for encouraging the Discovery of the Cypher of the Gibberish Letters (though they had made a Compliment to Your Majesty on their reading those Papers, and had laid aside all Thoughts of them for three Weeks together.) We cannot, without great Concern, reflect upon the Unseasonableness of these Applications:

† *Die Veneris 31 Martii, 1704.* It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Representation, or Address, of this House, agreed to the 28th Instant, and presented to Her Majesty this Day, and Her Majesty's most gracious Answer thereunto, shall be forthwith Printed and Published.

*Matth. Johnson, Cler' Parliamentor*



What can be more likely to prevent the Discovery of this dangerous Conspiracy, than a Disagreement among those who should unite their Endeavours in assisting Your Majesty to search to the Bottom of it? What can more encourage Offenders to an obstinate Silence, than the Prospect of having the Examinations interrupted by an unhappy Breach between the Two Houses? And what can give greater Security to Your Majesty's Enemies, than to see a Foundation laid for such Disputes, as will for ever put an End to all Parliamentary Enquiries into their Designs? The Gentlemen of the House of Commons have carried this Point so far, that rather than suffer us to proceed quietly in searching into the Bottom of this dangerous Conspiracy, they do not only reflect on us, but depart from their Pretences of Respect to Your Majesty, and censure Your Conduct in assisting our Examination, as if You had thereby done an Injury to Your Prerogative. We are therefore obliged in Duty to Your Majesty, as well as Justice to ourselves, farther to explain the Grounds on which we have acted, and to produce Precedents to shew, we have done nothing unwarranted by the Practice of our Ancestors.

We cannot but observe how the House of Commons have varied their Style; in their first Address they directly charged the Lords with wresting Prisoners out of Your Majesty's Hands; in their second Paper, they say only, We seem to exclude Your Majesty from any Power over the Prisoners; but the Charge is alike unjust in both.

They continue to complain of Two of our Orders; one of which, they say, was to remove Your Majesty's Prisoners out of Your Custody into our own; and the other, to commit their Examination solely to a Committee of seven Lords chosen, and appointed by ourselves.

We know not by whom a Committee of Lords can be chosen, but by the House of Lords; nor can there be any thing more Parliamentary, and more proper for the Dispatch and Secrecy of an Examination, than referring it to a Committee.

This was practised by both Houses of Parliament, in the Years 1678, and 1679; nor was it objected to either, that they took the Examination solely to themselves: Tho' the Committee of the House of Commons was, in the Style of their own Book, *a Committee of Secrecy*.

The Lords, the Commons, and the Privy-Council had that Plot under Examination at the same Time, yet there was no interfering of Jurisdctions; the Papers and the Witnesses were convey'd to one another, as there was Occasion, without any Disputes; none of them stopped or delayed the Enquiries of the others, but concurred in promoting them.

We might have expected, that when the House of Commons charged us a second Time with violating Your Royal Prerogative, and the known Laws of the Land, they would have specified what Branch of the Prerogative we had infringed, or what Law, Statute, or Usage, we had broken: Whenever they think fit to be more particular in the Charge, we shall be very ready with our Answers.

We shall always contend with the House of Commons in Zeal for Your Majesty's Honour and Safety; but we shall never pretend to be meritorious, in giving up what we know to be

the Right of Parliaments: And we are sure Your Majesty understands and loves the Constitution of the *English* Government too well, to approve of such a Present; and therefore we must again beg Leave to insist on our former Representation, as well founded in every Particular.

We have no Cause to be sorry to hear it has been so universally well received, since we are sure it cannot but be for Your Majesty's Service, as well as a full Justification of ourselves. We were very careful that there should be no Harshness in any Expressions of our Representation; but if they complain of Reasoning they cannot answer, or are uneasy to hear Truths they cannot deny, it is not our Fault.

The House of Commons were certainly in the right, in not producing the Precedents which they say they have of ill Language that has passed between the Two Houses, because it could not have been agreeable to Your Majesty.

We must own we never searched our Books for that Purpose; and we believe, that if ever the Commons used the like before, our Ancestors thought it unbecoming them to return it; and we think it most proper to be forgotten.

We cannot think that any Expressions (by whatsoever Zeal inspired) that are not suitable to the Decency which is due from one House of Parliament to another, can shew a Respect to Your Majesty, or add any Force to their Arguments.

We do not comprehend what is meant by their saying, We did appropriate to the House of Lords only, the Name of a Parliament. There is no Foundation for that Charge in any Word of our Representation; nor was there any Occasion for such an Assertion in the Controversy between us; both Houses are alike interested in the Point we maintain. We are sure the House of Commons have claim'd and exercised such a Power of Examination and Commitment as the Lords insist upon; and we are well assured, that on proper Occasions every future House of Commons will do the like again: So that let the Gentlemen of the present House of Commons be as liberal as they please in renouncing their own Right, and as much displeased as they think fit with the House of Lords, for not following their Example, we have this Comfort, that Your Majesty is too equitable to think amiss of us for defending our Parliamentary Rights, and we are sure of having every House of Commons that shall sit hereafter of our Side, as well as every *Englishman*, who values the Constitution of his Country.

There is no Passage in our History more notorious, than that the pretended House of Commons, in the Year 1648, when they could not prevail with the House of Lords, then sitting, to join with them in the intended Murder of their King, took upon them first to abolish the House of Lords by a Vote, and then to proceed to do that execrable Fact by themselves.

It is not therefore to be imagined what the House of Commons can mean, by saying, That Assembly was composed of Members of both Houses. If all other Proof of the contrary was wanting, yet the Testimony of that blessed, though unfortunate King, is abundantly sufficient, who made it one of his Exceptions to that detestable Court at his Trial.

We

We can never call to Mind that Fact without Horror, and yet we are obliged by Law to commemorate it every Year; and surely it can never be mentioned more usefully than upon such an Occasion, when the strange Usage of one House of Parliament by another, makes it impossible not to reflect on the miserable Consequences that have formerly followed from such Differences.

When the Gentlemen of the House of Commons act according to the Measures taken in those Times, they ought not to be offended if they are remembered by the Lords. If they will take upon themselves to stop the issuing out Your Majesty's Writs for filling up their House, and that in several Places, and for a long Time, whereby they make themselves an imperfect Representation, which is a Wound to the Constitution, a Wrong to the Boroughs, who have a legal Right to send Representatives, and an Injustice to Your Majesty, who has an undoubted Title to the Service and Attendance of all the Members; can they wonder, or ought they to complain, if we presume to tell Your Majesty, That very few Things were less excusable in that unhappy House of Commons, than their refusing to fill up their Body, and compleat the Representation?

These Beginnings are very dangerous: It is not easy to foresee how far such a Practice may be carried, or what Effects it may have upon the Boroughs that suffer the present Wrong, or upon others who may apprehend the like Usage; and who can say, but, in After-Times, an ill Prince may take Advantage of such Precedents, and think himself justified in with-holding his Writs from some, by as good Law as the Commons can shew for pretending to stop them from issuing to others?

The Commons have made three Addresses to Your Majesty upon this Occasion, yet have not stated the Matter in Dispute fairly in any one of them. The plain Matter of Fact is this; *Boucher, Ogilby, &c.* being seized by the Custom-House Officers on the Coast of *Sussex*, as they landed from *France*, were sent for to be brought to Town by Messengers; the Lords having resolved to examine these Persons themselves, Ordered the Messengers to bring them to the House, and committed them to the Black Rod, in order to their Examination. The Question is, Whether this Proceeding of the House of Lords was a Breach of any Law, or contrary to the Custom of Parliaments? We asserted it was not, and as we humbly apprehend, we proved our Assertion, by undeniable Reasons, and we assured Your Majesty we could justify it by Precedents.

It appears by our Records, That we have at all Times, when we thought it expedient for the publick Good, not only taken Prisoners out of the Custody of Messengers (which is but a Temporary Confinement, in order to the examining Persons, or while they are under Examination) but taken them out of any other Custody, and put them sometimes into the Custody of Your Majesty's Officers attending the House of Peers, sometimes removed them from one Prison to another, as the House thought most safe and proper for their Examination.

Persons condemn'd, and under Sentence of Death, may be most properly called the Prisoners of the Crown, when their Lives and Estates, as well as Liberties, are entirely at Mercy; yet the

House of Lords has sent for several in those Circumstances from the furthest Parts of *England* to be examined.

We could produce Precedents in all Times, when any thing of this Nature has been before the House, the most ancient Records furnishing the clearest and most frequent Instances of the Jurisdiction of the Lords, in examining, trying, and punishing all great Offenders.

But we shall at present confine ourselves to the Proceedings in respect to the Popish Plot, in the Reign of Your Majesty's Royal Uncle, (except in some few Instances in both Houses, as well before as after that Time) not only because that was the last Conspiracy that fell under a Parliamentary Examination; but because both Houses of Parliament enter'd into the Enquiry with equal Zeal.

And we beg Leave to annex to this our humble Address, some Extracts of the Proceedings of both Houses in that Enquiry, N<sup>o</sup> I, II.

We desire to observe, That though the King mention'd that Plot in his Speech at the opening of the Session; yet he was so far from communicating the Particulars to the Parliament, or desiring them to look into it, that he directly told them, he would leave that Matter to the Law.

He was not very desirous of having the Parliament meddle with that Enquiry, and therefore 'tis reasonable to suppose, he would not have been silent, if their Proceedings had been a Violation of the Prerogative, and the known Laws of the Land.

We beg Leave to make this single Remark on such of the Precedents as relate to the Removal of the Popish Priests after Sentence of Condemnation, That this was taken notice of by the Commons, and several Messages passed between the Two Houses about them: The Commons were earnest that they should be executed, and insisted to have them sent back to the several Prisons for that Purpose; but they never pretended to deny that the Lords had Power to send for them, or change the Custody.

The Commons, in their second Address, pretend to have been sensibly affected and provoked to their harsh Treatment of the Lords, by what pass'd in the Lords House the 29th of *January*, which was almost six Weeks after their first Address was presented.

It looks as if they wanted Reasons to justify the ordering that Address, when they are forced to defend it by Arguments drawn from Facts which happen'd so long after.

If the Commons had considered our Addresses of the 29th of *January*, or the 15th of *February*, they would have found in them no Contradictions, or Counter-Orders to Your Majesty, with which they charge us. We were inform'd of several Papers that had not been communicated to us; those we desired, and we received them by Your Majesty's Command; and have, we hope, made use of them for Your Majesty's Service, and the publick Safety. We have had the Happiness that our Zeal has been more than once approved by Your Majesty: And we leave the Commons to justify their own Coldness and Indifference, in a Point of such high Concern.

If we look back on the Steps the Commons have made in this whole Matter, they are such as will hardly be believed hereafter: And we can desire



desire nothing more for our Justification, than that our Proceedings and theirs may be compar'd.

When the Papers relating to this Conspiracy were laid before them, they contented themselves with reading them, and without offering any Advice or Assistance, gave Your Majesty Thanks for laying the Papers before them, and expressed their Satisfaction in Your Majesty's wife Conduct, and great Care of your People. This was certainly justly due to Your Majesty's prudent Administration, but was not all that might have been reasonably expected from a House of Commons, when Your Majesty had laid before them the Account of such a dangerous Conspiracy.

Thus the Matter rested for several Weeks : And when at last the House of Commons thought fit to take up a second Time the Consideration of those Papers, instead of doing what we hoped, and the Kingdom expected from them, all they did was to find new Cause of Displeasure against the Lords, to complain of what Your Majesty had done, to solicit You to re-assume the just Exercise of Your Prerogative, and to desire You to stop our Proceeding, as of dangerous Consequence, and what might tend to the Subversion of the Government.

This Conduct seems very unaccountable : And when they had not thought fit to pass any Judgment on the Conspiracy, 'tis hard that the Enquiry into it should be so severely censured.

The Commons confine what we spoke in General Terms of the fatal Consequences that have happen'd in most Countries in *Europe*, from the unhappy Differences which have arisen between the Estates of the several Kingdoms, to the Instance of one Country : The Observation was general, and the Overthrow of the Liberties of most of our Neighbours sprung from this Root.

But we are surprized, that the House of Commons should single out that Instance of a Revolution in a neighbouring Country, where the Clergy and the Commons were prevail'd upon by the Management of the Court, to carry their Repentments against the Lords so far, that they deliver'd up the Authority of the Lords, the Freedom of the People, and made a total Alteration of the Government.

We cannot imagine what is meant by calling this Treachery of the Commons and Clergy, in betraying the Liberties of their Country, their uniting in the Publick Defence ; nor can we conceive how this comes to be mentioned on this Occasion : We hope there is no Danger of such a Union amongst us for such Purposes ; and we think Your Majesty, and Your People, are equally concern'd in this Insinuation.

'Tis wonderful that the Commons should magnify their own Care in examining our Journals, reflect on us for not looking into our own Books, and at the same Time cite two Precedents, in which they are entirely mistaken, and which prove the direct contrary to what is infer'd from them.

The Lords in their Representation affirm, That the Commons, by appealing directly to the Throne against the House of Lords, and charging them with Attempts of the highest Nature, without first asking a Conference, had done a Thing unprecedented. The Commons, to prove the contrary, cite the Address presented to Your Majesty on Behalf of the Bishop of *Worcester*,

and the Address of the Lords to the late King, on Behalf of Four Lords named in their Address. We crave Leave to state those two Cases : The Commons had censured the Bishop of *Worcester*, without giving him any Opportunity of being heard. They had voted him Unchristian, which surely is aspersing the Innocent without Possibility of Reparation, as well as it was condemning him without a Trial ; and made an Address to Your Majesty to remove him from being Almoner. This Proceeding seem'd very extraordinary with respect to Your Majesty, and very unparliamentary with respect to the House of Lords, of which the Bishop was a Member ; and yet no Notice was taken of them : Upon this, the Lords made an Application to Your Majesty, on Behalf of the Reverend Prelate, That he might not suffer in Your Majesty's Opinion, before he had an Opportunity of making his Defence.

The Case of the Four Lords was this : The Commons having at the Bar of the House of Lords impeach'd them for High Crimes and Misdemeanours, the next Day made an Address to the late King, to remove them from his Presence and Councils for ever : The House of Lords thought this an Attempt of the highest Nature upon their Judicature, that while the Causes were depending before them in Parliament, the Commons should quit the Part they had taken of Accusers, and pretend to be the Judges themselves, and solicit the King to put their Sentence in Execution immediately. But yet they proceeded to act with such a Moderation as was scarce to be justified ; they forbore expostulating with the Commons, much less did they appeal to the Throne against them, they only desired the King not to pass any Censure upon them before they were tried : They took no Notice that the Commons had made any Address, and only endeavoured to prevent the Injustice and Oppression which might have been done to their own Members, and the Affront offered to their Judicature, without making the least Reflection on this Proceeding ; and they had no other way of acting, for no Conference could have prevented the Impression that might have been made on the King by such an Application of the Commons.

Besides, in both these Cases the Commons were the Aggressors ; they first applied to the Throne, and made it necessary for the Lords to follow them. Thus far these Instances may be of Use to shew by what Steps the Commons rose to this way of addressing against the House of Lords ; they began these Attempts in the Case of particular Lords, which now they put in Practice against the whole Body of the Peers.

The Lords will think themselves concern'd in all Times to observe and maintain the Law and Usage of Parliaments in Impeachments ; and this they did with all possible Exactness, upon the Occasion of the Impeachments of those Four Lords ; but they could not judge it reasonable to let the Accusers share with them in their Judicature. And if the Commons in Times to come shall so far forget themselves, as to endeavour to blast Men's Reputations, by exhibiting Articles, when they are not able or prepared to maintain their Charge, the Lords will always look upon themselves as bound to do equal Justice, and discharge the Innocent. Nothing can truly lessen or weaken the Force and Awe of Impeachments,

Impeachments, but a partial Use of them : While they continue to be the equal Instruments of Publick Justice, they will have their Weight in all Places ; but if once they are made use of to defame Men only, without Thoughts of bringing them to Trial, Impeachments will lose their Terror, and the House of Commons will not encrease their Honour or Authority : And if in that Case the House of Lords could not do Justice to the Accused, they would be the only Judicature which had the unhappy Power of condemning, but not of acquitting.

The Lords are far from pretending to be the sole Examiners of Conspiracies hereafter, if the Commons will do their Duty in concerning themselves for the Publick Safety ; but if they will shew so little Zeal as the Gentlemen of this House of Commons have done, if when they are told of Conspiracies from the Throne, they will concern themselves so little as to leave the Enquiry to others, the Lords must of Consequence be the sole Enquirers, or else Parliaments must be totally excluded from such Examinations.

The Commons in their second Address complain, That they are accused most unjustly of exciting, and earnestly desiring Your Majesty to exert Your Prerogative against the House of Lords. The Words of their first Address are so plain, that no other Construction could be reasonably put upon them ; and we are now very sure we did not mistake their Meaning, since in the Votes which they have laid before Your Majesty, they have thought fit to explain themselves, and in direct Terms desire Your Majesty to re-assume the just Exercise of Your Prerogative, and take to Yourself the Examination of the Matters relating to the Conspiracy.

There needs no wresting or straining these Words to justify the Interpretation we made of their first Address ; and surely they had forgot what they said in the second, when they came to pass those Votes, by which the Sincerity of their Professions, when they pretend to desire that the Remembrance of those unhappy Differences may be blotted out, does best appear. But we are still at a Loss to know what they truly mean by Your Majesty's re-assuming Your just Prerogative.

Your Majesty was pleased to lay the Papers relating to the Conspiracy before us, and You had given Your Royal Approbation to the Method in which we had put the Examination : And it seems a strange Averseness to Parliamentary Inquiries, that they would not leave it possible, even with the Concurrence of the Crown, for either House of Parliament to enquire into Conspiracies ; though at the same Time we must freely own, that if this Power be not lodged in us by the Constitution, it ought not, nor indeed cannot be given and delegated by the Crown.

*Most Gracious Sovereign,*

We humbly ask Pardon for having detained you so long upon a Subject, which cannot but be disagreeable to Your Majesty.

We beg Leave to conclude, with expressing the just Sense we have of that virtuous and truly Royal Moderation, which Your Majesty has shewn upon this Occasion, in not suffering Yourself to be prevail'd upon, to do any Thing to the Prejudice of the Constitution, from whatsoever Hands

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the Invitation comes. It shall be our daily Prayer to Almighty God, That he will long preserve and prosper Your Majesty for the Good of this Kingdom ; and that Your Reign may be as glorious all the World over, as it is happy to all Your People.

*Her Majesty's most gracious Answer to the Representation, or Address.*

*My Lords,*

" I Hope none of my Subjects have any Desire to lessen my Prerogative, since I have no Thought of making Use of it, but for their Protection and Advantage.

" I look upon it as a great Misfortune, when any Misunderstandings happen between the Two Houses of Parliament, which cannot be without so much Prejudice to the Publick, that I shall never omit any thing in my Power to prevent the Occasions of them.

PRECEDENTS out of the Journals of the House of LORDS.

Nº I.

2 Die Martii, 1675.

A Paper was presented to the House, being Examinations taken by some Justices of the Peace in the County of Surrey, concerning some blasphemous Speeches spoken by John Taylor, now a Prisoner at the Gaol at Guilford, which Paper being read, the House Ordered as follows, viz.

Ordered, The Serjeant at Arms bring in safe Custody to the Bar of this House, on Friday next, at Ten of the Clock in the Forenoon, the Body of the said John Taylor.

Die Lune 21 Octobris, 1678.

His Majesty acquaints the Lords and Commons with a Plot against His Person, in a Speech, Part of which Speech, so far as relates to the Plot, follows, in hæc verba :

" I Now intend to acquaint you, (as I shall always do with any thing that concerns me) That I have been informed of a Design against my Person by the Jesuits ; of which I shall forbear my Opinion, lest I may seem to say too much, or too little, but I will leave the Matter to the Law ; and in the mean Time, will take as much Care as I can, to prevent all manner of Practices by that sort of Men, and of others too, who have been tampering in a high Degree by Foreigners, and contriving how to introduce Popery among us.

Whereupon, the House made the following Address.

" WE Your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal in Parliament assembled, having been acquainted by Your Majesty, That there is Information given of a horrible Design against your Majesty's sacred Life, (which God long preserve) are humble Suitors to Your Majesty, that You would vouchsafe to communicate to us (as far as Your Majesty shall think fit) such Papers as have any Tendency



" dency to the Discovery thereof, or of any other  
 " Design against the Protestant Religion, as it is  
 " now established in the Church of England, that  
 " we may use our utmost Endeavours to serve  
 " Your Majesty, according to our bounden Duty  
 " and Allegiance.

23 Octobris, 1678.

The Papers concerning the Plot were delivered to the Deputy-Clerk of the Parliaments, by one of the Clerks of the Council.

Lords Committees were appointed to consider of the Papers transmitted from the Council by His Majesty's Directions, concerning the Discovery of the horrid Design against His Majesty's sacred Person, or of any other Design against His Majesty, or His Kingdom, by introducing Popery, whose Lordships have Power to send for Persons, Papers, and Records, as they shall see Cause.

30 Octobris, 1678.

Ordered, That Nathaniel Thompson, who is now in the Custody of William Sorocold, for printing Popish Books for James Thompson, shall stand committed to the Prison of the Gate-house, at Westminster, during the Pleasure of this House.

31 Octobris, 1678.

Ordered, That the Lords with White Staves do attend His Majesty, humbly to desire Him from this House, that the Papers of Mr. Whitebread and Mr. Misbo, which have been read at the Council-Table, may be, by His Majesty's Command, brought before the Committee to examine Papers relating to the horrid Design against His Majesty; and also that the Clerks of the Council may bring the Minutes taken by them upon the Examination of Titus Oates, and others, before the Council, concerning this Matter.

4 Novembris, 1678.

Ordered, That the Lords Committees appointed to examine the Lords who are Prisoners in the Tower of London, for Treason, shall also examine such other Persons who are now Prisoners in the Tower for Treason, as their Lordships shall think fit, and also Sir Ellis Leighton, now Prisoner in Newgate; and that the Lord Chief Justice of England do assist their Lordships at such Times as they shall appoint; and that one of the Clerks of the Privy-Council do attend their Lordships.

8 Novembris, 1678.

Ordered, That the Lords with White Staves do attend His Majesty, humbly to desire Him from this House, That the Letter of Mr. Coleman, of the 29th of September, 1675, to Father le Chese, and another of his to Father le Chese, wherein he owns the sending the said Letter, and Monsieur le Chese's Letter, whereby he owns the Receipt thereof, which have not been read in this House, may, by His Majesty's Order, be brought thither.

The Lord Treasurer reported His Majesty's Answer,

That His Majesty will give Order, that the said Letters shall be brought to this House as soon as may be.

18 Novembris, 1678.

Ordered, That Edward Coleman, now a Prisoner in Newgate for Treason, be brought by the Keeper of Newgate, before the Lords Committees to peruse Letters and Papers, to Morrow at Nine of the Clock in the Forenoon; and that the Duke of Monmouth be desired to send a sufficient Guard of Soldiers, to assist the Keeper of Newgate, in this Service of bringing and returning Edward Coleman.

Ordered, That the Lords with White Staves do humbly desire His Majesty, That His Majesty will please to give Order, that the Papers of Mr. Goodwin, now in the Hands of the Clerks of the Council, may be brought before the Lords Committees appointed to consider of, and prepare the Evidences for the Trial of Mr. Coleman.

23 Novembris, 1678.

Ordered, That the Serjeant at Arms attending this House, his Deputy or Deputies, do forthwith repair to Stratford upon Avon in Warwickshire, and bring thence the Body of Mr. John Gerard, supposed to be a Priest, and one other Person mentioned, but not named, (in a Letter dated there the 20th of November) and subscribed Simon Cale, Mayor, John Wolmer, in which it is recited, That they were in Custody there, for refusing the Oath of Allegiance, and bring them in safe Custody to the Bar of this House.

27 Novembris, 1678.

Ordered, That Dr. Lower, and Dr. Warner, be, and are hereby appointed to visit Mr. White, alias Whitebread, being sick near Weld-house, and give this House an Account to Morrow Morning, in what Condition of Health they find him.

28 Novembris, 1678.

Ordered, That the Clerk of His Majesty's Privy-Council, in whose Custody the Depositions lately taken at the Council-Board are, which concern the Queen's Majesty, be, and is hereby appointed to bring the said Depositions before this House to Morrow at Nine of the Clock in the Forenoon.

29 Novembris, 1678.

The House received an Account, That Dr. Lower and Dr. Warner have visited Whitebread, and they find that his former Distempers have left him, and he hath now only a Tertian Ague; and their Opinion is, That he may be removed safely upon his Intermitting Days: It is Ordered, That the Serjeant at Arms attending this House shall to Morrow attach the Body of Mr. White, alias Whitebread, and carry him forthwith to the Prison of Newgate, there to remain in safe Custody, till he shall be delivered by due Course of Law.

Upon Information given to this House, that one Daniel Maccarty, a Romish Priest, is now under Custody in Thetford, in the County of Norfolk: It is Ordered, That the Serjeant at Arms attending this House, his Deputy or Deputies, shall forthwith repair to Thetford aforesaid, and bring thence the Body of the said Daniel Maccarty, in safe Custody to the Bar of this House.

20 Decembris,

20 Decembris, 1678.

Whereas *Daniel Maccarty*, a Romish Priest, was, by Order of the 29th of *November* last, brought from the Gaol at *Thetford*, in the County of *Norfolk*, by the Serjeant at Arms attending this House, and is now in his Custody here: It is this Day Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lords Committees for examining Persons and Papers, for Discovery of the horrid Design against His Majesty's Person and Government, shall examine the said *Daniel Maccarty*; and if their Lordships find that he is not charged with any Particulars relating to the said Design, he is to be remitted and left to the Law; but if otherwise, their Lordships are to report to the House what they find concerning him.

3 Decembris, 1678.

Upon Information given to this House, by the Lord *Windsor*, That one *Edward Whitaker* stands committed in the City of *Worcester*, for some unbecoming Words by him uttered, as is certified in a Letter to his Lordship, signed *Jo. Tyas*, Mayor: It is Ordered, That the said Mr. *Whitaker* shall give Bail before the Mayor of *Worcester*, for his Appearance before the Lords in Parliament, within eight Days next after such Bail given.

*Die Veneris*, 13 *Die Decembris*, 1678.

*Edward Whitaker* being call'd for to answer the Charge against him sent up from the Mayor of *Worcester*, but being not to be found: It is Ordered, That if the said *Edward Whitaker* come not, and render himself before the House rises, he shall be attached; and he not coming, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Serjeant at Arms attending this House, or his Deputy, do forthwith attach the Body of *Edward Whitaker* of *London*, Gentleman, and bring him in safe Custody to the Bar of this House to Morrow Morning, to answer to the Informations put into this House upon Oath against him: And this shall be a sufficient Warrant on that Behalf.

*Die Sabbati*, 14 *Die Decembris*, 1678.

Whereas *Edward Whitaker* was this Day brought to the Bar by the Serjeant at Arms attending this House, to answer to the Informations against him, which he denies, alledging, That he hath Witnesses to clear himself from the Matters charged on him: Upon Consideration had thereof, it is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said *Edward Whitaker* may, and shall have Order for summoning his said Witnesses, to be heard *viva voce*, on the Second Day of the Sitting of the Parliament, next after *Christmas*, if he desires it: At which Time also, the Witnesses, who have inform'd against him, shall be summoned to be heard *viva voce*; and that in the mean Time, the said Serjeant at Arms shall deliver the said *Edward Whitaker* into the Prison of *Newgate*, there to remain in safe Custody 'till further Order: And this shall be a sufficient Warrant on that Behalf.

3 Decembris, 1678.

Upon Information given to this House, That one — *Barneſſy*, a Romish Priest, is now un-

der Custody in the City of *Worcester*; It is Ordered, That the Serjeant at Arms attending this House, his Deputy and Deputies, shall forthwith repair to the City of *Worcester*, and bring thence the Body of the said — *Barneſſy* in safe Custody to the Bar of this House.

*Die Sabbati*, 14 *Die Decembris*, 1678.

Whereas *Henry Barneſſy*, who was by Order of this House sent for from the Gaol in *Worcester*, was this Day brought to the Bar by the Serjeant at Arms attending this House, and there examined, being supposed to be a Popish Priest: It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said *Henry Barneſſy* shall, by the said Serjeant at Arms, or his Deputy or Deputies, be returned into the Gaol in *Worcester*, there to remain in safe Custody 'till he shall be thence delivered by due Course of Law: And this shall be a sufficient Warrant on that Behalf.

*Die Lunæ*, 23 *Die Decembris*, 1678.

Upon reading the Petition of *Henry Barneſſy*, now in the Custody of the Serjeant at Arms attending this House, shewing, That being by Order of this House brought from *Worcester*, and by like Order to be returned thither again; and that being very old and sickly, he is not able to bear the Journey in this hard Season of the Year; and therefore praying, that he may remain here upon Bail: It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said *Henry Barneſſy* (being charged to be a Popish Priest) shall, by the said Serjeant at Arms, be delivered into the Prison of the *King's-Bench*, there to remain in safe Custody, 'till he be better able to be returned to *Worcester*, in order to his Trial there: And this shall be a sufficient Warrant on that Behalf.

6 Decembris, 1768.

Upon Report made by the Earl of *Clarendon*, from the Lords Committees to examine Persons and Papers, &c. That their Lordships think it necessary that Sir *Henry Titchborne*, a Popish Recusant, now Prisoner in the Goal at *Winchester*, be brought up to Town: It is Ordered, That the Serjeant at Arms attending this House, his Deputy and Deputies, shall forthwith repair to *Winchester*, and bring thence the said Sir *Henry Titchborne*, and deliver him into His Majesty's Tower of *London*, there to remain in safe Custody till further Order: And this shall be a sufficient Warrant in that Behalf.

To Sir George Charnock, Knight, Serjeant at Arms attending this House, and to the Keeper of the Gaol at *Winchester*, and to the Constable of His Majesty's Tower of *London*, and their respective Deputies; as also to all His Majesty's Officers, Civil and Military, to be aiding and assisting in this Service.

20 Decembris, 1678.

Upon Information given to this House upon Oath, That *Tho. Tborn*, now or late Servant to *Richard Tasbrough*, Esq; hath utter'd dangerous and treasonable Words; and that he is at present in the Gaol at *Bury* in *Suffolk*: It is Ordered, That



That the Serjeant at Arms attending this House, or his Deputy or Deputies, shall forthwith repair to *Bury*, and bring thence the Body of the said *Thomas Thorn*, in safe Custody to the Bar of this House, to answer thereunto.

21 Decembris, 1678.

Whereas *Richard Tasbrough*, Esq; was this Day brought to the Bar by the Serjeant at Arms, and denied all that was alledged against him; and whereas there is a Warrant of the Lord Chief Justice of *England*, issued against him: It is Ordered, That the Serjeant at Arms deliver the said *Richard Tasbrough* in safe Custody to such Person or Persons as the Lord Chief Justice of *England* shall direct.

29 Martii, 1679.

Upon Information given to this House, That *Richard Tasbrough*, Esq; who is charged to be guilty of the late horrid Conspiracy, for which he was committed to the Prison of the *King's-Bench*, hath since been enlarged upon Bail, and is now to be brought to his Trial at the Assizes at *Bury*, in the County of *Suffolk*: Upon Consideration had of the Case of the said *Richard Tasbrough*, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Judge of Assize for that County be, and is hereby directed, that his Lordship proceed no further upon the Trial of the said *Richard Tasbrough*, than to the Indictment of him, and the finding thereof by the Grand Jury; and that the said *Richard Tasbrough* may be safely sent up to *London*, in order to his Trial to be had at the Bar of the Court of *King's-Bench*. And it is further Ordered, That Mr. *Thomas Beake*, one of the Messengers attending His Majesty's Council-Board, be, and is hereby authorized and required with all Speed to attend the said Judge of Assize for this Purpose, and to take Care of the Execution of this Order, as to the bringing up the said *Richard Tasbrough* in safe Custody, in order to his intended Trial: And for so doing this shall be a sufficient Warrant.

26 Decembris, 1678.

Ordered, That it be referred to the Lords Committees for examining Persons and Papers, to examine *Richard Tasbrough* and *Thomas Thorn*.

Upon Information to the House by the Lord Viscount *Newport*, That one *Valentine Harcourt*, a Popish Priest, is taken, and now in Custody in the Gaol at *Sbrewsbury*: It is Ordered, That the Sheriff for the County of *Salop*, be, and is hereby required, to take and give Order for the sending of the said *Valentine Harcourt* in safe Custody, to appear at the Bar of this House, and that the Charge of the said Sheriff shall be allowed upon his Account in the Court of *Exchequer*; and it is Ordered, That the Sheriffs of the respective Counties, through which the said *Valentine Harcourt* shall pass in his being sent up, as aforesaid, be aiding and assisting to the Furtherance thereof, as Occasion shall require.

Die Veneris, 21 Die Martii, 1679.

Upon Report made from the Lords Committees, for examining Matters relating to the Discovery of the late horrid Conspiracy, That Cap-

tain *Francis Spalding*, Deputy-Governor of *Chepstow* Castle, who was by Order of this House, dated the 21st Day of *November* last, committed to the Prison of the *King's-Bench*, for Matters wherewith he stands charged, hath since that Time been enlarged upon Bail, and being upon Bail, commands still at *Chepstow* Castle, as Deputy-Governor, and hath misbehaved himself, as hath appeared to the said Lords Committees: It is thereupon Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Serjeant at Arms attending this House, or his Deputy or Deputies, do forthwith attach the Body of the said *Francis Spalding*, and bring him in safe Custody to the Bar of this House: And this shall be a sufficient Warrant on that Behalf.

Die Jovis, 27 Die Martii, 1679.

Captain *Francis Spalding* being brought to the Bar by the Serjeant at Arms, was asked, Whether he is not under Bail? which he acknowledged; and that Sir *Ralph Delaval* and Mr. *Banks* are his Bail, taken in the *King's-Bench*; and being asked, Why he went down to *Chepstow* Castle, being a Prisoner under Bail, and by whose Order? He said, he had no Order for it, but went of his own Head. Then the Matter wherewith he was charged, and for which he was committed on the 21st of *November* last, was read, and also the Deposition of *Thomas Crowder*, a Soldier of that Garrison, was read, &c.

Whereas Captain *Francis Spalding*, who was on the 21st of *November* last committed to the Prison of the *King's-Bench*, there to remain in safe Custody 'till further Order, hath since procured his Enlargement upon Bail, and repaired to *Chepstow* Castle, as Deputy-Governor thereof, and misbehaved himself there, as appeareth by the Deposition of *Thomas Crowder*, and other Matters, upon which he was this Day examined at the Bar, being now in the Custody of the Serjeant at Arms attending this House: It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said *Francis Spalding* be re-committed to the Prison of the *King's-Bench*, there to remain in safe Custody 'till further Order; and that the said Serjeant at Arms, or his Deputy, take Care to convey him the said *Francis Spalding* to the said Prison: And this shall be a sufficient Warrant on that Behalf.

25 Martii, 1679.

Upon Report made by the Earl of *Clarendon*, from the Lords Committees for examining Matters relating to the Discovery of the late horrid Conspiracy, That their Lordships are of Opinion, that *Edward Turner*, a Priest and Jesuit, who hath been examined before them, and is now in the Custody of *Francis Strutt*, a Messenger, should be committed to Prison: It is Ordered, That the said *Francis Strutt* shall forthwith deliver the said *Edward Turner* into the Prison of the Gate-house, at *Westminster*, there to remain as a Prisoner, 'till he shall be delivered by due Course of Law.

To *Francis Strutt*, Messenger, his Deputy and Deputies, and to the Keeper of the Prison of the Gate-house.

15 Aprilis,

15 Aprilis, 1679.

Whereas Sir *William Andrews* is seized on, and brought to Town in Custody, as an Agent in the late horrid Conspiracy against the King: It is this Day Ordered, That the Officer, in whose Custody the said Sir *William Andrews* is, shall forthwith deliver the said Sir *William Andrews* into the Prison of the *Gate-house*, at *Westminster*, there to remain a Prisoner, 'till further Order.

28 Aprilis, 1679.

Upon Report made from the Lords Committees for examining Matters relating to the Discovery of the late horrid Conspiracy, That their Lordships have received Information made upon Oath, that Sir *William Andrews*, now Prisoner in the *Gate-house*, at *Westminster*, is engaged in the Conspiracy against His Majesty's Person and Government: It is thereupon Ordered, by the Lords Spiritual and Temporal in Parliament assembled, That the Keeper of the *Gate-house* aforesaid, be, and is hereby required to take Care, that the said Sir *William Andrews* be forthwith conveyed and safely delivered into the *Tower of London*, there to remain a Prisoner, 'till he shall be discharged by due Course of Law; and for to doing this shall be a sufficient Warrant.

21 Aprilis, 1679.

Upon Report from the Committee for Examinations, That *James Allen*, who was taken into Custody, being charged with encouraging *Elizabeth Oxley* to fire Houses, hath been examined by their Lordships, and denieth what is charged upon him; and in regard the Examinations taken concerning a House fired in *Fetter-Lane*, are before a Committee of Commons: It is Ordered, That the Serjeant at Arms attending this House, do forthwith carry the said *James Allen* to the said Committee, to be examined, and disposed of as they please.

Upon Report from the Committee of Examinations, That their Lordships think it necessary, that *William Sturges*, now a Prisoner in the Gaol at *Chelmsford*, should be brought to Town: It is Ordered, That the Serjeant at Arms attending this House, do forthwith repair to the Gaol at *Chelmsford*, in *Essex*, and bring thence the Body of the said *William Sturges*, and deliver him into the Prison of the *Gate-house* at *Westminster*, there to remain a Prisoner 'till further Order.

23 Aprilis, 1679.

Upon Report from the Lords Committees for Examinations, That their Lordships find it requisite, that *David Lewis*, who hath been tried and condemned as a Popish Priest, at the Assizes held for the County of *Monmouth*, and is now in Gaol there, may be brought to Town: It is Ordered, That the Sheriff for the said County of *Monmouth*, be, and is hereby required to take Care, and give Order for the speedy conveying of the said *David Lewis*, in Safety from the said Gaol, to be delivered into the Prison of *Newgate*, the Charges of which Service shall be allowed to the said Sheriff upon his Account in the *Exchequer*.

The like Order for *Roger Hanslip*, in the Gaol at *Gloucester*.

VOL. VIII.

The like Order for *John Kemble*, in the Gaol at *Hereford*.

The like Order for *Francis Johnson*, alias *Webb*, in the Gaol at *Worcester*.

8 Maii, 1679.

The Earl of *Clarendon* reported from the Lords Committees for Examinations, That *William Harcourt* the Jesuit is taken, and now in the Hands of the Officer that took him: It is Ordered, That the said *William Harcourt* be brought to the Bar presently.

*Eodem die post Meridiem.*

*William Harcourt* was brought to the Bar, and being there charged with Treason, the House made the following Order.

Whereas *William Harrison*, alias *Harcourt*, was this Day brought to the Bar, and was there charged with High Treason: It is Ordered, That the Gentleman-Usher of the Black Rod, attending this House, do take special Care forthwith to convey the said *William Harrison*, alias *Harcourt*, in Safety to *Newgate*, there to remain a Prisoner, 'till he shall be discharged by due Course of Law.

To the Gentleman-Usher of the Black Rod, attending this House, &c.

Die Lune 19 Maii, 1679.

Whereas *Richard Gerrard*, Esq; is charged upon Oath with Treason: It is Ordered, That the Keeper of the Prison of the *Gate-house*, at *Westminster*, (in whose Custody the said *Richard Gerrard* now is) be, and is hereby required forthwith to take Care for the conveying of the said *Richard Gerrard* to the Prison of *Newgate*, there to remain a Prisoner 'till he shall be discharged by due Course of Law; and this shall be a sufficient Warrant in that Behalf.

30 Octobris, 1680.

It being signified to this House, That *Oliver Plunket*, the Titular Primate of *Ardmagh* in the Kingdom of *Ireland*, is, by His Majesty's Order, brought over hither, in order to his Trial here, and is now in Custody in the Hands of a Messenger: It is Ordered, That the Messenger, in whose Hands the said *Oliver Plunket* now is, be, and is hereby authorized and required, forthwith to convey and deliver the Body of the said *Oliver Plunket* into the Prison of *Newgate*, and that the Keeper of the said Prison do keep him there in Safety, until he shall be discharged by due Course of Law; and that the said Keeper and his Under-Officers do take Care, that the said *Oliver Plunket* be kept as a close Prisoner, 'till the Pleasure of this House be further signified; and this shall be a sufficient Warrant in that Behalf.

To the Messenger in whose Custody the said *Oliver Plunket* is, and also to the Keeper of the Prison of *Newgate*, his Deputies and Under-Officers, and every of them.

4 Januarii, 1680.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, That Mr. Attorney-General do peruse the Information read this Day,



and draw Warrants for the Commitments of Sir *John Fitzgerald*, Colonel *Pierce Lacy*, and Lieutenant Colonel *Bradley*, as may be available in the Law, and attend the Judges for their Assistance therein, and present the same to the House to Morrow, at Ten of the Clock in the Forenoon.

*Ordered*, That Sir *John Fitzgerald*, Colonel *Pierce Lacy*, and Lieutenant Colonel *Bradley*, do remain in the Custody of the Pursivant, as now they are, 'till the House gives further Order.

5 Januarii, 1680.

*Ordered*, by the Lords Spiritual and Temporal in Parliament assembled, That Sir *John Fitzgerald* be committed to the *Gate-house* for Treason, in compassing the King's Death, and in levying War, and practising to introduce a Foreign Force into the Kingdom of *Ireland*, and to depose the King from the Crown of *Ireland*; and that the Messenger, in whose Hands the said Sir *John Fitzgerald* is, be, and is hereby authorized and required, forthwith to deliver and convey the Body of the said Sir *John Fitzgerald* into the Prison of the *Gate-house*; and that the Keeper of the said Prison do receive and keep him there in safe Custody, 'till he shall be discharged by due Course of Law: And this shall be a sufficient Warrant in that Behalf.

*Ordered*, by the Lords Spiritual and Temporal in Parliament assembled, That *Pierce Lacy*, Esq; be committed to *Newgate* for Treason, in compassing the Death of the King, and in levying War, and practising to introduce a Foreign Force into the Kingdom of *Ireland*, and to depose the King from his Crown of *Ireland*; and that the Messenger, in whose Hands the said *Pierce Lacy* now is, be, and is hereby authorized and required, forthwith to convey and deliver the Body of the said *Pierce Lacy* into the Prison of *Newgate*; and that the Keeper of the said Prison do receive and keep him there in safe Custody, until he shall be discharged by due Course of Law: And this shall be a sufficient Warrant on that Behalf.

The like Order for Colonel *William Bradley*.

Die Martis, 10 Die Decembris, 1689.

*Ordered*, by the Lords Spiritual and Temporal in Parliament assembled, That Mr. *Vernatti*, now in Custody, do stand committed to the Gentleman-Usher of the Black Rod attending this House. And it is further Ordered, That the said Gentleman-Usher go to the Lodging of the said *Vernatti*, and secure his Papers, and seal them up in his Presence, and set a Guard on his House or Lodging.

PRECEDENTS out of the Journals of the  
House of COMMONS.

N° II.

24 Martii, 14 Car. II.

UPON Information, That *George Wilters* had been the Author and Publisher of a scandalous and seditious Pamphlet, to enrage the People, and to vilify and defame the Members of this House, and to blemish the Honour and Justice of this House, and their Proceedings, and was now a Prisoner in *Newgate*:

*Resolved*, That the said *George Wilters* be brought in Custody of the Serjeant at Arms attending this House, or his Deputy, to the Bar of this House, at Four of the Clock this Afternoon, to be examined touching the Matters objected against him; and the Keeper of *Newgate*, or his Deputy, is to cause him to be brought accordingly.

*Resolved*, That this House do adjourn 'till Three of the Clock this Afternoon.

*George Wilters* being then brought in Custody to the Bar of this House, and the scandalous seditious Libel, with which he stands charged, being shewn unto him, the same being in Two distinct Papers; upon View of the first of them, he declared, *That the same might be his Hand, but that it was but Parcel of what he intended*; and the other Writing being shewn unto him, he confessed the same to be of his own Hand-Writing; and two Witnesses being called in, viz. *Henry Northrop*, and *Robert Heybourne*, and testifying that they took the said Papers from under Mr. *Wilters*'s Hand, and that he was writing part of them just when they were taken from him; and that he did, upon Examination before Mr. Attorney-General, confess the said Papers to be of his own contriving and drawing.

*Resolved upon the Question*, That *George Wilters*, who was this Day brought from the Prison of *Newgate* to the Bar of this House, be sent Prisoner, and delivered into the Custody of the Lieutenant of the Tower, there to be kept in close Custody, and to be denied Pen, Ink, and Paper, and debarred from having any Company to come unto him. And it is referred unto Mr. *Pryn*, Mr. Serjeant *Charleton*, Mr. Solicitor-General, Serjeant *Maynard*, Dr. *Birkenhead*, Mr. *Thurland*, Mr. *Smyth*, Mr. *Vaughan*, and Mr. *Clifford*, or any Three of them, to peruse the seditious infamous Libel by him contrived, and draw up an Impeachment against him, and report it to the House at their next Meeting.

21 Octobris, 1678.

*Ordered*, That a Committee be appointed to examine concerning the Murder of Sir *Edmond-bury Godfrey*, and to enquire into the Manner and Means how he came by his Death; and likewise to enquire into the Particulars of the Plot and Conspiracy, mentioned in His Majesty's Speech, against his Person and Government; which Committee was impowered to send for Persons, Papers, and Records.

*Ordered*, That an Address be made to His Majesty by such Members of this House as are of His Majesty's Privy-Council, humbly to desire His Majesty, that all Papers which do relate to the Plot and Conspiracy, mentioned in His Majesty's Speech, against his Person and Government, may be communicated to the said Committee.

23 Octobris, 1678.

*Resolved*, &c. That the Matter concerning the Plot and Conspiracy, mentioned in His Majesty's Speech, against his Person and Government, be heard at the Bar of the House.

*Ordered*, That Mr. *Michael Godfrey* be forthwith sent for to attend with the Papers and Examinations, taken by Sir *Edmond-bury Godfrey*, and now remaining in his Custody sealed up, touching the Plot and Conspiracy mentioned in His Majesty's Speech.

24 Octo-

24 Octobris, 1678.

The Papers of Examinations taken by Sir *Edmondbury Godfrey*, touching the Plot and Conspiracy, mentioned in His Majesty's Speech, which were delivered in by Mr. *Michael Godfrey*, were opened, and by Mr. Speaker read to the House.

Ordered, That the Chairman of the Committee appointed to examine concerning the Murder of Sir *Edmondbury Godfrey*, do take into his Custody the Papers of Examinations, taken by Sir *Edmondbury Godfrey*, concerning the Plot, mentioned in His Majesty's Speech.

Ordered, That Mr. *White*, alias *Whitebread*, and Mr. *Micbo*, be removed from the House where they are now, to *Newgate*, in case they be in a Condition fit to be removed.

25 Octobris, 1678.

Mr. Speaker acquaints the House, That in Pursuance of the Order of the House of Yesterday, he had waited upon His Majesty, and acquainted him with the Informations the House had Yesterday received, and that His Majesty was pleased to acknowledge the great Care of this House in the Preservation of His Person and Government; and that His Majesty was informed, That Mr. *White*, alias *Whitebread*, and Mr. *Micbo*, were at present very sick, but that His Majesty would send to see them; and if they were in a Condition fit to be removed, they should be forthwith sent to *Newgate*.

Ordered, That the Members of this House, who are Justices of the Peace for the County of *Middlesex*, do repair to the Lodgings of Mr. *White*, alias *Whitebread*, and Mr. *Micbo*, and take their Examinations touching the Plot and Conspiracy, mentioned in His Majesty's Speech, against his Person and Government; and do issue out their Warrants for searching their Lodgings, and seizing all such Papers and Writings relating thereto, as shall be there found.

25 Octobris, 1678. *Post Meridiem*.

Ordered, That the Secretaries be desired to move the King, That the Keys of Mr. *Langborn's* Chamber may be delivered by the Messengers, in whose Hands the same are, to the Committee appointed by the House to search Mr. *Langborn's* Papers and Writings.

26 Octobris, 1678.

Ordered, That an humble Address be made to His Majesty, by such Members of this House as are of His Majesty's most Honourable Privy-Council, to desire His Majesty, That Mr. *Coleman's* Papers, and all other Papers relating to the Plot and Conspiracy mentioned by His Majesty in his Speech, may be communicated to the House.

Mr. Secretary *Williamson* informs the House, That in Pursuance of the Order of Yesterday, he had attended His Majesty, and acquainted him with the Desires of this House, That a Committee of this House might have Leave to search Mr. *Langborn's* Papers; and that His Majesty was pleased to give Leave that the same may be searched, and had appointed Two of the Clerks of the Council to assist the Committee therein: And that His Majesty was pleased to deliver him some of Mr. *Coleman's* Papers sealed up, and or-

dered him to deliver the same to the House; and had also commanded him to acquaint the House, That the rest of Mr. *Coleman's* Papers were at present under Examination before the House of Lords; and that so soon as the Lords had done with them, they should be communicated to this House: And the Papers were accordingly, by Mr. Secretary *Williamson*, delivered in sealed up.

29 Octobris, 1678.

Ordered, That His Majesty be humbly desired by such Members of this House as are of His Majesty's most Honourable Privy-Council, that an Inventory, or List of all Mr. *Coleman's* Papers, which have been sorted by the Clerks of the Council, may be communicated to this House; and that all those Papers which are not sorted, may be delivered over to a Committee of this House.

Ordered, That a Committee be appointed to examine Mr. *Coleman*, touching the Plot and Conspiracy mentioned in His Majesty's Speech.

31 Octobris, 1678.

This House being informed that the Clerk of the Council was attending without, with Mr. *Coleman's* Papers;

Ordered, That the Papers be delivered to the Clerk of the House, and by him transmitted to the Committee appointed to examine the same.

2 Novembris, 1678.

Ordered, That the Clerk of the Council now in waiting, do forthwith attend with Mr. *Harcourt's* Papers and Writings; and that all other Papers and Writings relating to the Plot, mentioned in His Majesty's Speech, either in the Hands of the Secretaries of State, or in the Hands of the Clerks of the Council, be forthwith communicated to this House, according to the Leave graciously given by His Majesty.

22 Novembris, 1678.

Resolved, That an humble Address be made to His Majesty by such Members of this House as are of His Majesty's Privy-Council, to desire His Majesty, That such Letters and Papers which relate to the Plot now under Examination, as have not been perused by this House, may be communicated to them.

29 Novembris, 1678.

A Message from the Lords by Sir *John Coel*, and Sir *Samuel Clark*:

Mr. Speaker,

"The Lords have received Information, That there is a Faculty under the Seal of Cardinal *Barberini*, for dispensing with the taking of the Oaths, and other Things, in the Hands of a Member of this House, which their Lordships desire may be communicated to them.

Sir *John Knight* acquaints the House, That the Paper mentioned by the Lords was found among Mr. *Ireland's* Papers, and he delivered the same in at the Clerk's Table; which being read by Mr. Speaker:

Ordered, That the said Paper be sent to the Lords, and that Mr. Speaker do acquaint the Mes-



Messengers, That when their Lordships have perused the same, this House does expect it should be returned again, in order to be entered in the Journal of this House; and the Messengers being called in, the said Paper was delivered to them, and Mr. Speaker acquainted them with the Pleasure of the House.

26 Aprilis, 1679.

*Resolved*, That an humble Address be made to His Majesty, to desire His Majesty to give Order for the executing of *Pickering*; and also to give Order to the Judges, to issue out their Warrants for executing the several Popish Priests, which they have condemned in their several Circuits.

5 Maii, 1679.

The Lord *Ruffel* acquaints the House, "That His Majesty had commanded him to let the House know, that His Majesty is willing to comply with the Request made to him by this House, concerning *Pickering*, and that the Law shall pass upon him accordingly.

"As to the condemned Priests, the House of Peers have sent for them, in order (as His Majesty conceives) to some Examinations.

9 Maii, 1679. *Post Meridiem*.

Mr. *Hampden* reports from the Committee appointed to inspect the Lords Journals, and see, *inter alia*, upon what Grounds the condemned Popish Priests are sent for, That the Committee had inspected the Journals, and taken out Copies of their Proceedings, which he reported to the House.

20 Maii, 1679.

*Ordered*, That a Message be sent to the Lords, concerning the condemned Popish Priests, sent for up to *London* from the several County Gaols, by Order of their Lordships.

22 Maii, 1679.

Sir *William Franklyn* reports from the Committee appointed to draw up and prepare a Message to be sent to the Lords, concerning the Popish Priests condemned in the Circuits, That the Committee had agreed upon a Message to be reported to the House, which he read in his Place, and afterwards delivered the same in at the Clerk's Table, where the same was twice read, and upon the Question, agreed, and is as followeth, (*viz.*)

"The House of Commons having made an humble Address to His Majesty, That he would be pleased to give Order to the Judges, to issue out their Warrants for the executing the several Popish Priests condemned in the several Circuits; and His Majesty having been graciously pleased to signify to the House of Commons, That your Lordships have sent for them, in order (as he conceived) to some Examination:

"And the House of Commons being also informed, That the said Priests have, by Order from your Lordships, not only been brought out of the several Counties, where they were condemned, but continued yet in *Newgate*, and other Prisons, in or about the Cities of

*London* and *Westminster*, by reason whereof the Execution of the Sentence pronounced upon them is still delayed, do desire of your Lordships, That the said Priests may be forthwith remanded to the several Counties where they were condemned, that so they may be executed, according to the Judgments passed upon them.

25 Octobris, 1 Will. & Maria.

The House being informed, That several of the Prisoners of the *Tower* were now bailing in the Court of *King's-Bench*, being brought thither by the Governor of the *Tower*, by Virtue of a *Habeas Corpus* awarded for that Purpose, particularly Sir *Thomas Jenner*, Mr. *Richard Grabam*, and Mr. *Philip Burton*:

*Ordered*, That Sir *Thomas Jenner*, Mr. *Richard Grabam*, and Mr. *Philip Burton*, be immediately brought to this House by the Governor of the *Tower*, to answer to such Matters as shall be objected against them.

And Mr. Speaker issued his Warrant accordingly, and the same was sent by the Serjeant at Arms attending this House.

Afterwards, the Serjeant acquainted the House, That Sir *Thomas Jenner* was bailed, and gone out of Court, and that Mr. *Grabam* was bailing in the Court; and that notwithstanding he had delivered the Warrant to the Governor of the *Tower*, and that he was coming with Mr. *Grabam*, and Mr. *Burton*.

*Ordered*, That Sir *Thomas Jenner* be sent for in Custody of the Serjeant at Arms attending this House, to answer to such Matters as shall be objected against him.

The House being informed, That Mr. *Burton* and Mr. *Grabam* were at the Door, they were severally called in to the Bar of the House, and charged with the several Matters mentioned in the said Report, and heard what they could say touching the same.

And being withdrawn,

*Ordered*, That Mr. *Richard Grabam*, and Mr. *Philip Burton*, be committed to the Custody of the Serjeant at Arms attending this House, for several high Crimes and Misdemeanours objected against them.

*Resolved*, That a Committee be appointed to examine Witnesses against Mr. *Grabam* and Mr. *Burton*, and to prepare a Charge against them.

And it is referred to, &c.

4 Januarii, 1697.

The House being informed, That \* Mr. *Reginald Marriot* had sent to several Members of this House, Letters, acknowledging, That he had been concerned in the irregular Indorsement of *Exchequer Bills*; and therein offering fully to relate how that notorious Practice hath been projected and carried on, and in what Manner he had been drawn into the same:

*Ordered*, That the said Mr. *Reginald Marriot* be summoned to attend this House immediately; and the said Mr. *Marriot* attending accordingly, he was brought in by the Serjeant at Arms attending this House to the Bar, where he delivered an Account of his Knowledge of that Matter in Writing, signed by himself, which he read at the Bar, and afterwards delivered in to the House.

\* Mr. *Reginald Marriot* was under Prosecution, by Order of the Lords Commissioners of the Treasury, and was under Bail.

*Ordered*,

*Ordered*, That the Examinations taken before the Lords of the Treasury, relating to the irregular Indorsement of the *Exchequer* Bills, be laid before this House.

A Motion being made, That the House will order, that all Prosecutions at Law against the said Mr. *Marriot*, be stayed during the Pleasure of the House;

And a Debate arising thereupon:

*Resolved*, That the Debate be adjourned 'till to Morrow Morning.

*Ordered*, That the said Mr. *Marriot* be taken into Custody of the Serjeant at Arms attending this House; and that no Person be permitted to converse with, or bring any Letters to him, without Leave of the House.

5 Januarii, 1697.

Mr. *Lowndes*, according to Order, presented to the House several Papers relating to the Examinations, taken before the Lords of the Treasury, touching the false Indorsement of the *Exchequer* Bills.

The House resumed the adjourned Debate of Yesterday, touching the ordering the Stay of any Prosecution at Law against Mr. *Marriot*.

*Ordered*, *Nemine Contradicente*, That all Prosecutions at Law against Mr. *Reginald Marriot*,

in relation to the false Indorsement of *Exchequer* Bills, be stayed, during the Pleasure of this House.

But nothing more was done in this Business; † for April the third, 1704, Her Majesty came to the House, and prorogued the Parliament, and concluded her Speech thus:

*My Lords and Gentlemen,*

" AT the opening of this Session, I did earnestly express my Desires of seeing you  
" in perfect Unity among yourselves, as the most  
" effectual Means imaginable to disappoint the  
" Ambition of our Enemies, and reduce them  
" to an honourable and lasting Peace; and tho'  
" this has not met with all that Success which I  
" wished and expected, yet being fully convinced,  
" that nothing is so necessary to our common  
" Welfare, I am not discouraged from persisting  
" in the same earnest Desires, That you would  
" go down into your several Counties, so disposed to Moderation and Unity, as becomes all  
" those who are joined together in the same Religion and Interest.

† For an Account of the Differences between the Lords and Commons, relating to the Examination of *Beuchey*, see also Bishop *Burnet's* History of his own Time, Vol. II. Pag. 373, 374.

N U M B E R XXXVI.

*An Account of what passed most remarkable in the Session of Parliament, 1709, in the House of Commons, relating to the Case of Dr. Henry Sacheverell.\**

December the 13th, 1709.

A Complaint being made, this Day, in the House of Commons, of Two printed Books, the one entituled, *The Communication of Sin*; A Sermon preached at the Assizes held at Derby, August 15, 1709; by Doctor Henry Sacheverell: And the other entituled, *The Perils of False Brethren both in Church and State*; Set forth in a Sermon preached before the Right Honourable the Lord-Mayor, Aldermen, and Citizens of London, at the Cathedral Church of St. Paul's, on the 5th of November, 1709; preached also by the said Dr. Henry Sacheverell; and both printed for Henry Clements: Which Books were delivered in at the Table; where several Paragraphs in the Epistle Dedicatory, preceding the first mentioned Book, and also several Paragraphs in the latter Book, were read.

*Resolved*,

That a Book, entituled, *The Communication of Sin*; being a Sermon preached at the Assizes held at Derby, August 15, 1709: And a Book, en-

tituled, *The Perils of False Brethren both in Church and State*; Set forth in a Sermon preached before the Right Honourable the Lord-Mayor, Aldermen, and Citizens of London, at the Cathedral Church of St. Paul, on the 5th of November, 1709; are malicious, scandalous, and seditious Libels; highly reflecting upon Her Majesty and Government, the late happy Revolution, and the Protestant Succession as by Law established, and both Houses of Parliament; tending to alienate the Affections of Her Majesty's good Subjects, and to create Jealousies and Divisions among them.

*Ordered*,

That Dr. Henry Sacheverell, and Henry Clements, do attend at the Bar of the House to Morrow.

John Dolben, Esq; made the first Motion against the Two Sermons, and was seconded by Spencer Cupper, Esq;

They were opposed by several Gentlemen; who said, they did not perceive there was any thing in the Sermons, malicious, scandalous, or seditious; nor reflecting on Her Majesty and Government, the late happy Revolution, and

\* The Trial, printed in Vol. 5. Pag. 645. begins with the Proceedings in the House of Lords, and no Notice of the Steps taken in the House of Commons preceding it; therefore the above Proceedings should be read as an Introduction to that Trial.



the Protestant Succession as by Law established; of which they did not observe any Mention; neither had the Paragraphs the least Relation to it. What concerned both Houses of Parliament, was supposed to be the Vote passed four or five Years before, about the Church being in Danger: And as to that, it was affirmed, the Church was then in Danger, was still in Danger, and, it was to be feared, would always be in Danger; not from Her Majesty's Administration, but from Papists on the one Hand, and Fanatics on the other; from these her professed Enemies, and from *False Brethren*. It was owned, there were some warm Expressions in the Sermon preached at *St. Paul's*: And no wonder that a true Son of the Church of *England* should express himself with some Warmth and Vehemence, against the Liberties that were taken, and with Impunity, to revile the Church, her Doctrines and Ministers, to blaspheme the Name of God, and to insult, and treat with Contempt, every Thing that is sacred. To this, little was returned, besides bitter Investives against the Sermons; and particularly, against the Doctrines of *Passive Obedience* and *Non-Resistance*.

December 14.

The House being informed, that Dr. *Henry Sacheverell* and *Henry Clements* attended, according to Order; Dr. *Sacheverell* was called in, and, at the Bar, was examined touching the Two Sermons Yesterday complained of to the House: Where he owned the Preaching, the directing of the Printing and Publishing the Sermon preached the 5th of *November*, 1709, at the Cathedral Church of *St. Paul*, and the Dedication of it; and also, that the Epistle Dedicatory to the Sermon preached at the Assizes at *Derby*, the 15th of *August*, 1709, was agreeable to that which he put to the Impression of that Sermon, which he directed to be printed and published. And being withdrawn, and a Question being proposed, That the said Dr. *Henry Sacheverell* be impeached of High Crimes and Misdemeanours, he was called in again, and asked, If he had any thing to offer to the House? When he spoke to this Effect:

*Mr. Speaker,*

"I am very sorry I am fallen under the Displeasure of this House; I did not imagine any Expressions in my Sermons were liable to such a Censure as you have passed upon them. If you had been pleased to have favoured me so far, as to have heard me before you passed it, I hope I should have explained myself so as to have prevented it."

And after being heard, he was directed to withdraw.

Then the Question was insisted on, for impeaching the Doctor of High Crimes and Misdemeanours. And several Gentlemen spoke against it, desiring he might rather be prosecuted by the Attorney-General; and if the Sermons were seditious, if they did reflect on Her Majesty and Government, the happy Revolution, and the Protestant Succession as by Law established, the Doctor would be convicted, and punished for them according to his Demerits. But if (as common Fame said) the Judges, and the Queen's learned Council, had been consulted, and were of Opinion, the Doctor could not be punished for them by the ordinary Proceedings in the

Courts of Law; they thought it was very unreasonable, by an Impeachment in Parliament, to endeavour to make a Man guilty, and a Criminal, that, by the Laws of the Land, was innocent. However, it was

*Resolved,*

That the said Dr. *Henry Sacheverell* be impeached of High Crimes and Misdemeanours.

*Ordered,*

That Mr. *Dolben* do go to the Lords, and, at their Bar, in the Name of all the Commons of *Great-Britain*, impeach the said Dr. *Henry Sacheverell* of High Crimes and Misdemeanours, and acquaint the Lords, that the House will, in due Time, exhibit Articles against the said *Henry Sacheverell*.

*Ordered,*

That a Committee be appointed to draw up Articles of Impeachment against the said Dr. *Henry Sacheverell*.

And a Committee was appointed accordingly. And they have Power to send for Persons, Papers, and Records, and to sit *de die in diem*.

Then *Henry Clements* was called in, and, at the Bar, was examined touching his Printing and Publishing the said Two Books: Which he owned, and that he had the Copies of them from Dr. *Sacheverell*. After which, he was directed to withdraw.

*Ordered,*

That the said Dr. *Henry Sacheverell* be taken into the Custody of the Serjeant at Arms attending the House.

Sir *Samuel Garrard*, Bart. Lord-Mayor of the City of *London*, was in the House, in his Place: And the Speaker observing to the Doctor, that the House took Notice, he had affirmed, in the Epistle Dedicatory to my Lord-Mayor of *London*, before the Sermon preached at *St. Paul's*, that he had published it by his Lordship's Command, he was asked, Whether my Lord-Mayor did command him to publish his Sermon? To which he answered, "That, in the strict Sense of the Word *Command*, he did not; but in the common Acceptation of the Word, as the Desires of Superiors to their Inferiors are said to be *Commands*, he did command him; for he did desire and press him to print it." Then he gave a particular Account of the Conversation he had, at several Times, with my Lord-Mayor, about it; though his Lordship thought fit peremptorily to deny it.

After this, the Two following Resolutions passed.

*Resolved,*

That the Reverend Mr. *Benjamin Hoadley*, Rector of *St. Peter Poor*, *London*, for having often strenuously justified the Principles on which Her Majesty and the Nation proceeded in the late happy Revolution, hath justly merited the Favour and Recommendation of this House.

*Resolved,*

That an humble Address be presented to Her Majesty, that she will be graciously pleased to bestow some Dignity in the Church on the said Mr. *Hoadley*, for his eminent Services both to Church and State.

These were proposed by *An. Henley*, Esq; and seconded by Sir *Jos. Kekyll*. The House was in great Confusion, it being late, and every one expecting immediately to rise. However, there were several Negatives to these Resolutions:

And

And when they came to be consider'd, they were generally thought to be strange Resolutions, with regard to Her Majesty, who had approved a Sermon preach'd before her by the Bishop of *Exon*, and desired him to print it. Against that Sermon Mr. *Hoadley* writ, and engaged in Controversy with the Bishop; yet he is declared to have justly merited the Favour and Recommendation of the House, and the Queen is desired to bestow some Dignity in the Church on him, for these eminent Services. This Proceeding was thought so improper, so indecent to Her Majesty, that several, who were otherwise against Dr. *Sacheverell*, blamed it very freely. And it was very observable, Mr. *Lechmere* took an Occasion, some Time after, upon another Debate, to censure it.

December 15.

Ordered,

That Mr. *Dolben* (when he goes to the Lords, to impeach Dr. *Henry Sacheverell* of High Crimes and Misdemeanours) do acquaint the Lords, That the said *Henry Sacheverell* is in Custody of the Serjeant at Arms attending the House, ready to be deliver'd to the Gentleman-Usher of the Black-Rod, when the Lords shall please to give Order therein.

Mr. *Dolben* reported to the House, That he had, pursuant to their Order, been at the Lords; and, at their Bar, had impeach'd Dr. *Henry Sacheverell* of High Crimes and Misdemeanours; and had also acquainted the Lords with their other Order.

December 17.

A Petition of *Henry Sacheverell*, D. D. in Custody of the Serjeant at Arms attending the House, was presented to the House, and read; praying, That the House would be pleased to order him to be admitted to Bail, that he may have an Opportunity of making his Defence, being inform'd, that he is impeach'd at the Bar of the House of Lords, for High Crimes and Misdemeanours.

Ordered,

That a Committee be appointed to search Precedents concerning the taking Bail in Cases of Persons committed for High Crimes and Misdemeanours; and that they do make their Report thereof to the House upon Monday Morning next.

Ordered,

That it be referred to the Committee, who are to draw up the Articles of Impeachment against Dr. *Henry Sacheverell*, to search Precedents, and make Report thereof to the House.

There was some Debate before the House ordered a Committee.

December 19.

Mr. *Dolben* acquainted the House, That the Committee, who were upon Saturday last appointed to search Precedents concerning the taking Bail in Cases of Persons committed for High Crimes and Misdemeanours, and to report the same to the House this Day, had made all the Progress they could in so short a Time; but that they found, it required more Time, and had directed him to move, That they may have farther Time to make their Report.

Ordered,

That the said Committee do search the Lords Journals, in relation to the Proceedings upon Impeachments by the Commons, and make their Report thereof to the House, with all convenient Speed.

Ordered,

That all Committees be adjourn'd, except the Committee who are appointed to draw up the Articles of Impeachment against Dr. *Henry Sacheverell*; and who are to search the Lords Journals in relation to the Proceedings upon Impeachments by the Commons.

December 22.

Mr. *Dolben* reported, from the Committee appointed to search Precedents concerning the taking Bail in Cases of Persons committed for High Crimes and Misdemeanours, and to search the Lords Journals in relation to the Proceedings upon Impeachments by the Commons, and to make their Report to the House, That they had searched Precedents, and the Lords Journals, accordingly; and had directed him to report what Precedents they had found; which he read in his Place, and afterwards deliver'd in at the Table, where the same were read.

And a Motion being made, and the Question being put, That Dr. *Henry Sacheverell* be admitted to Bail, according to the Prayer of his Petition, it passed in the Negative.

*Yea's 79, No's 114.*

In the Debates on this Matter, there was a great Variety of Opinions: Some thought, the Commons might bail a Person committed by them, but not in this Case: Others, that it was discretionary in them, whether they would bail, or not; and that this Person deserved it not from them; and one that the Commons could never bail in any Case. Others insisted, in Favour of Liberty, that if they could bail, they ought to bail; and that they could bail, argued from the Equity and Reasonableness of the Thing, that those who could commit, might bail: They shewed Precedents in the Case of Mr. *Seymour*, and the Smugglers, impeach'd for High Crimes and Misdemeanours; in one of which, the Persons impeach'd and committed by the House of Commons, were admitted to Bail; in the other, the Commons, upon their Petition, consented to bail them; and they had been bailed, but their Sureties made Objections to the Condition of their Bonds, and would not submit to it. Besides, it was urged, that this Case was in itself bailable, and so agreed by all Gentlemen; and that the Doctor's Hardship might be the greater, because it was probable, if the Commons did not bail him, he must lie in Custody, when bailable by Law, till after the Recess of Parliament: For the Articles not being exhibited to the Lords against him, it was thought the Lords would not take him out of the Custody of the Commons, and commit him upon a General Charge; and till they committed him, they could not bail him. This was his Case; for upon Application to the Lords, they refused to commit him, till the Commons had exhibited their Articles: The Lords said, the Commons might never exhibit any; and they would not do so unreasonable a Thing, as to commit any one on a General Charge. And so he lay a Prisoner, by the Commitment



mitment of the House of Commons, in a Cafe bailable by Law, (and for which there were Precedents for the Commons admitting to Bail,) from *December 14.* to *January 12.* It is fitting to observe, That some urged against the bailing the Doctor, one Part of the Message delivered by Mr. *Dolben* to the Lords, when he impeach'd him at their Bar, 'That the Doctor was in Custody of the Serjeant at Arms attending the House, ready to be deliver'd to the Gentleman-Usher of the Black-Rod, when the Lords should please to give Order therein.' But others, that agreed with them against admitting him to Bail, approved of Expedients to get off that, and did not think it reasonable to preclude him from it by their own Message.

There was one Thing in the Debates gave some Diversion to the House. An honourable Member declaring himself against bailing Dr. *Sacheverell*, said, He would put them in Mind of the Cafe of Mr. *Thompson*: (*ante* Vol. 7. Pag. 491.) He was a Parson too; he was impeach'd by the Commons for High Crimes and Misdemeanours; he was bail'd by them; he afterwards ran beyond Sea, turn'd Priest, and so evaded their Justice; and, he believed this Fellow (as he was pleas'd to call him) would do so too. To this, another Gentleman answer'd, he believed the Noble Lord was as much mistaken in his Conclusion, as he was in his Premises: He did not believe the Doctor would run away, if he was bail'd: And as to the Precedent of Mr. *Thompson*, the Noble Lord was mistaken in every Part of it, except that he was a Parson; for he was not bailed by the Commons, neither did he run beyond Sea, and turn Priest, and so evade their Justice; for the Parliament that impeach'd him was soon after dissolved: He was afterwards made Dean of *Bristol*, and lived and died so.

*January 9.*

Mr. *Dolben* reported from the Committee appointed to draw up Articles of Impeachment against Dr. *Henry Sacheverell*, That they had drawn up Articles accordingly, which they had directed him to report to the House: And he read them in his Place, and afterwards delivered them in at the Table, where they were read.

It was then propos'd, That it being impossible the Members could make their Observations on the Articles in such Readings, and the Honour of the House being concerned to have them such as might be justified, a little Time should be allow'd, before they were read the second Time, to consider them; and to convince others, they intended not Delay by it, they only ask'd till *Wednesday*. This was order'd; but then it was moved, that no Copies might be taken of the Articles, because it was not proper they should be made publick in the Coffee-Houses, nor shew'd to the Doctor, before they were agreed to, and carried up to the Lords. On the other Hand, it was urged, this was precluding Members of their Right, by unreasonable Suppositions; that they had a Right to take Copies of any Papers before the House, for their Information; and it was not to be imagin'd, they would publish the Articles in Coffee-Houses, or shew them to the Doctor. And, what if they did shew them to him? Were they to be kept a Secret from him? Would he not have a Copy of the Articles order'd him by the Lords, as soon as

they were carried to them? And what Advantage would it be to him, or Disadvantage to the Commons, to see them sooner? But if Copies were not to be taken of the Articles, it was no Favour, no Benefit to put off the Consideration of them; it had an Appearance of doing what was fair and reasonable, but would, in Truth, be doing nothing; for without taking Copies of them, they could not be consider'd. And it having been said, by one Gentleman, That this was an extraordinary thing, and what had never been done before; another reply'd, He thought it extraordinary, but could not agree, it had never been done before; he remembered the like, when Sir *John Fenwick's* Confessions had been read in the House of Commons; they were ordered to be sealed up by the Speaker, that no Copies might be taken of them. He did not approve that Precedent so well as to follow it; he wish'd Copies had been taken of those Papers, and that they had been printed; he believed, the Kingdom would have been the better for them at this Day.

After these Debates, this Motion was waved.

*January 11.*

The Order of the Day being read, for the reading a second Time the Report from the Committee to whom it was referr'd to draw up Articles of Impeachment against Dr. *Henry Sacheverell*;

*Ordered,*

That the Report be read Paragraph by Paragraph.

Then the first Paragraph (being the Preamble to the Articles) being read, and a Motion being made, and the Question being put, That the Report be re-committed; it pass'd in the Negative.

*Yea's 131, No's 232.*

*Ordered,*

That Candles be brought in; and Candles were brought in accordingly.

*Resolved,*

That the House doth agree to the said first Paragraph.

Then the Articles being severally read, one by one, were (upon the Question severally put thereupon) agreed unto by the House, to be the Articles to be exhibited against the said Dr. *Henry Sacheverell*.

Then the last Paragraph being read, the same was also agreed unto by the House.

*Ordered,*

That the Articles be Engrossed.

There were great Debates in relation to the re-committing the Articles of Impeachment. In which, great Mistakes were shewn in the Preamble to the Articles, the Recitals partial, and wrong Inferences drawn from them. And the Articles were said to be so loose and uncertain, it was impossible any one could plead to them; and it was press'd, that those who drew them up, would let the House know, on what Paragraphs in the Sermon they were grounded. To this was answer'd, That was too early, when they only had the Preamble under Consideration; when the Articles were read, they would produce the Passages in the Sermons. But then, though the Passages were desired, they call'd for the Question, and never perform'd what they had promised.

*January*

January 12.

The Engrossed Articles of Impeachment against Dr. Henry Sacheverell, were read.

Ordered,

That the said Articles be carried to the Lords, by Mr. Dolben.

At this Time, there was no Debate nor Division upon the Articles, only a Negative to the Question of carrying them up to the Lords. Gentlemen saw how hardly they had been treated the Day before by the Majority, and therefore contented themselves with shewing their Dislike of these Proceedings in this Manner.

Mr. Dolben carried these Articles to the Lords, who read them the first Time, and took Dr. Sacheverell into the Custody of the Black Rod.

January 13.

The Serjeant at Arms acquainted the House, That, in pursuance of their Order of the 15th of December last, he did Yesterday deliver Dr. Henry Sacheverell to the Deputy of the Gentleman-Usher of the Black-Rod; and had taken a Discharge for him.

Dr. Sacheverell petitioned the Lords to be bailed. Their Lordships ordered a Committee to enquire into the Validity of his Bail; allow'd him Council, and a Copy of the Articles.

January 14.

Dr. Sacheverell is ordered to give in his Answer to the Articles next Wednesday. The Lords accepted of Dr. Lancaster, Vice-Chancellor of Oxon, and Dr. Bowes, for his Bail: And accordingly he was bailed, himself in a Recognizance of 6000 l. and his Sureties each in 3000 l.

Serjeant Prat, Sir Simon Harcourt, Mr. Raymond, and Mr. Phipps, are allowed, by the Lords, to be Council for Dr. Sacheverell; and Mr. Huggins to be his Solicitor.

January 16.

Dr. Sacheverell, upon his Petition, has farther Time given him, to put in his Answer.

January 25.

Dr. Henry Sacheverell attended the House of Lords, and delivered in his Answer to the Articles of Impeachment against him; which was read. And being asked, Whether or no he would abide by it? He answered in the Affirmative; and then the Doctor was ordered to withdraw. Their Lordships sent his Answer down to the Commons.

A Message from the Lords, by Mr. Rogers, and Mr. Hiccocks, That they were commanded to acquaint the House of Commons, that Dr. Henry Sacheverell hath put in his Answer to the Articles of Impeachment, sent from the House of Commons against him; which their Lordships communicate to the House, and desire that the said Original Answer may be return'd with convenient Speed.

Ordered,

That the said Answer of Dr. Henry Sacheverell, now sent from the Lords, be read to Morrow Morning.

VOL. VIII.

January 26.

The Answer of Dr. Henry Sacheverell, sent from the Lords Yesterday, was, according to Order, read, and

Ordered,

That the Answer of Dr. Henry Sacheverell, sent from the Lords Yesterday, be referr'd to the Committee who were appointed to draw up Articles of Impeachment, which were exhibited by the Commons to the Lords, against Dr. Henry Sacheverell, for High Crimes and Misdemeanours; and that they do consider thereof, and report their Opinion, what is most proper to be done towards the farther Proceedings thereon. And they have Power to send for Persons, Papers, and Records. And they are to meet at such Times and Places as they shall think fit.

February 2.

Mr. Dolben reported from the Committee, to whom the Answer of Dr. Henry Sacheverell was referred to consider of the said Answer, and report their Opinion, what is most proper to be done towards the farther Proceedings thereon, That they had considered the same, and that they do find there are contained therein many Things not warranted by the Course of Proceedings upon Impeachments, foreign to the Charge, unbecoming a Person impeach'd, and plainly designed to reflect upon the Honour of the House; and do humbly submit to the Judgment of the House their Opinion, That, for avoiding any Imputation of Delay to the Commons, in a Case of so great Importance, a Replication be forthwith sent up to the Lords, maintaining the Charge of the Commons; and the Committee have accordingly prepared the same, which they had directed him to report to the House; and he read the same in his Place, and afterwards delivered the Report in at the Table, where the same was read. And the Replication being read a second Time,

Resolved,

That the said Replication be the Replication of the Commons to the Answer of Dr. Henry Sacheverell.

Ordered,

That the Replication be Engrossed.

There were Debates in relation to the engrossing of the Replication; when the Committee were desired to shew, what there was in Dr. Sacheverell's Answer, not warranted by the Course of Proceedings upon Impeachments, foreign to the Charge, unbecoming a Person impeach'd, and plainly designed to reflect on the Honour of the House. The entering into these Particulars was declined; for which Reason, and because the Answer appear'd full and satisfactory, there was a Division upon engrossing the Replication; in which the Yeas were 182, the Nays 88.

February 3.

The engrossed Replication of the Commons to the Answer of Dr. Henry Sacheverell was read.

Ordered,

That the said Replication be sent to the Lords.

Ordered,

That the Original Answer be return'd to the Lords.

7 D

Ordered,



*Ordered,*

That Mr. *Dolben* do carry the Original Answer of Dr. *Henry Sacheverell*, and the Replication thereunto, to the Lords.

*February 4.*

A Message from the Lords by Sir *Richard Holford* and Mr. *Gery*, That they were commanded to acquaint the House of Commons, that their Lordships have appointed *Thursday* next, at Seven of the Clock in the Morning, for the Trial of *Henry Sacheverell*, Doctor in Divinity, at the Bar of their House; and that their Lordships will take Care, that there will be Conveniences made there for the Managers of the House, at the Trial, upon the Impeachment against him.

*Resolved,*

That the Managers be appointed to make good the Articles of Impeachment against Dr. *Henry Sacheverell*.

*Ordered,*

That the Committee to whom it was referred to draw up the said Articles, be the said Managers.

*Resolved,*

That this House will be present at the Trial of the Impeachment against Dr. *Henry Sacheverell*, as a Committee of the whole House.

*Ordered,*

That a Message be sent to the Lords, to acquaint them with the said Resolution, and to desire, that a convenient Accommodation may be prepared for them. And,

*Ordered,*

That Mr. *Bromley* (who moved this Matter) do carry the said Message to the Lords.

The House divided on this Question, *Yeas* 192, *No's* 180.

There was a long Debate upon this Message; in which the several Precedents of the Cases of the Earl of *Strafford*, and the Lord Viscount *Stafford*, were cited, whose Trials were in the Court prepared in *Westminster-Hall*: And the Case of the *French* Smugglers, impeached 1698, for High Crimes and Misdemeanours, when there were Conferences, and free Conferences between the Two Houses, about a convenient Accommodation for the Commons to be present at their Trial; which the Lords agreed to, being convinced by the Reasons of the Commons. It was said, that the first regular Trial upon an Impeachment in Parliament, in the present Method, was the Trial of the Earl of *Strafford*; and the Commons declared and insisted, *they had a Right to be present at the Trial, as an House, or a Committee of the whole House, as they thought fit; and that they held it necessary and fit, that all the Members of the House should be present at the Trial, to the End every one might satisfy his own Conscience, in the giving his Vote to demand Judgment.* In the Case of the Lord Viscount *Stafford*, the like Accommodation was never disputed; but in that of the Smugglers it was; and the Lords would have distinguish'd betwixt an Impeachment for High Crimes and Misdemeanours, and for High Treason: Which the Commons answered, shewing, That the different Nature of those Crimes related only to the Punishment, and did not alter and change the Nature of the Court. And by

the Strength of this, and other Arguments, which may be seen in the Reports of the Conferences, and free Conferences, entered on their Journals, they did, at last, prevail.

*February 6.*

A Message from the Lords by Mr. *Gery* and Mr. *Hiccocks*, That the Lords had commanded them to acquaint the House, that their Lordships have ordered the Lords with White Staves, humbly to move Her Majesty from their House, that she will be pleased to give Order for a Place to be prepared in *Westminster-Hall*, for their Lordships to proceed upon the Trial of *Henry Sacheverell*, Doctor in Divinity, who now stands impeach'd before their House.

*February 7.*

The Lords received a Message from Her Majesty, That Her Majesty would give Order for a Place to be prepared in *Westminster-Hall*, for their Lordships to proceed upon the Trial of *Henry Sacheverell*, Doctor in Divinity, who now stands impeach'd before their House.

*February 8.*

A Message from the Lords by Mr. *Medlycot* and Mr. *Fellows*, That they were commanded by the Lords to acquaint the House, that Her Majesty hath given Order, that a Court be prepared in *Westminster-Hall*, for the Trial of Dr. *Henry Sacheverell*; which will take up some Time; and that therefore the Trial cannot be at the Time appointed, but that as soon as the Place is prepared, the House shall have Notice of the Day of Trial.

*February 10.*

*Ordered,*

That the Managers appointed to make good the Articles of Impeachment against Dr. *Henry Sacheverell*, have Power to send for Persons, Papers, and Records.

*Ordered,*

That Mr. *William Borret* be appointed Solicitor to the said Managers, for prosecuting the said Impeachment.

*February 15.*

Serjeant *Prat*, and Mr. *Raymond*, having declined being Council for Dr. *Henry Sacheverell*, the Lords, upon his Petition, assign'd him Mr. *Dee*, Mr. *Dod*, and Dr. *Henchman*, for his Council; as also, Sir *Simon Harcourt*, and Mr. *Phipps*, before allowed by their Lordships; and Mr. *Huggins* his Solicitor.

*February 18.*

The Lords appointed *Monday* come Seven-night for the Trial of Dr. *Henry Sacheverell*.

The Trial, accordingly, began on *Monday* the 27th of *February*. (*Vide* the Trial in Vol. 5.) Which Day, and the following Days, a great Concourse of People attended Dr. *Sacheverell* from his Lodgings at the *Temple*, to *Westminster*, and at his Return, with great Acclamations and Shouts, &c.

A Complaint was made in the House of Commons of these Riots. And,

*March*

March 2.

*Resolved,*

That an humble Address be presented to Her Majesty, That she will be graciously pleased to take effectual Measures to suppress the present Tumults, set on foot and fomented by Papists, Nonjurors, and other Enemies to Her Majesty's Title and Government; and to issue her Royal Proclamation, promising a Reward to such as shall discover and seize those Incendiaries, as have been the Occasions of the late Tumults and Disorders.

No Member, in the least, justified these Tumults; and all professed a Readiness to concur in an Address for the suppressing them; but desired the Address might be so framed, in such general Words, that it might pass unanimously. They excepted to those Words, *Set on foot and fomented by Papists, Nonjurors, and other Enemies to Her Majesty's Title and Government*; because it did not appear, any Papists or Nonjurors were concerned in them, and there was no Reason to believe they were; but if they would be particular, it was moved *Republicans* might be added; because it was certain, there were such Persons; and as certain, that by their Principles, they would lay hold on any Opportunity, and join with any People, to disturb the Peace and Quiet of the Government; for they hoped to fish in troubled Waters.

There was a Debate upon adding that Word; in which, a certain Gentleman argued against it, *because it was not to be imagined, they would be for pulling down their own Meeting-Houses*. A plain Concession, that the *Dissenters* were *Republicans*; for which his Party blamed him.

The House divided upon the Word *Republicans*, Yea's 114, No's 279.

The same Day, Mr. Secretary Boyle reported to the House, That he had attended Her Majesty with their Address: To which Her Majesty had been pleased to give this very gracious Answer:

"HER Majesty is extremely sensible of the great Care and Concern of the House of Commons, for the publick Peace, upon this Occasion; and as Her Majesty has a just Resentment at these tumultuous and violent Proceedings, so she will take immediate Care for suppressing them; and will lose no Time in endeavouring to find out the Authors and Abettors, in order to bring them to Punishment: And to that Purpose, will cause a Proclamation to be published, according to the Desire of this House."

*Resolved, Nemine Contradicente,*

That the humble Thanks of this House be returned to Her Majesty, for her most gracious Answer to their said Address.

*Ordered, Nemine Contradicente,*

That a Committee be appointed to draw up an Address upon the said Resolution.

And a Committee was appointed accordingly.

And they were ordered immediately to withdraw into the Speaker's Chamber, to draw up the said Address.

March 3.

Sir Thomas Parker reported the Address, which was as follows.

*The humble ADDRESS of the House of Commons to the Queen.*

*Most Gracious Sovereign,*

"WE Your Majesty's most dutiful and loyal Subjects, the Commons of Great-Britain, in Parliament assembled, out of a deep Sense of the repeated Instances of Your Majesty's unparalleled Goodness, beg Leave to return our most hearty Thanks for Your most gracious Answer to our late humble Address, and for Your effectual Care in suppressing those rebellious Tumults, which were set on foot, and fomented by Papists, Nonjurors, and other Enemies to Your Majesty's Title and Government, in Defiance of the just Prosecution of the Commons against Dr. Henry Sacheverell.

"And we most humbly beseech Your Majesty to believe, that as this Prosecution proceeded only from the indispensable Obligation which we, Your faithful Commons, looked upon ourselves to lie under, not to sit still and patiently see the Justice of the late happy Revolution, and the Glory of our late Royal Deliverer reflected upon, Your Majesty's undoubted Title struck at, Your Administration, by which so many Blessings are derived upon us, endeavoured to be rendered odious to the People, and represented as destructive of the Church and Constitution, the present Establishment and Protestant Succession undermined, the Resolutions of Parliament treated with Contempt, the Governors of the Church, and Your Majesty, as Supreme, aspersed and vilified, the Toleration exposed as wicked, and Sedition insolently invading the Pulpit.

"So the Maintenance of Your Majesty's Right, the Safety of Your Person, the Quiet of Your Government, the Continuance of our Happiness under Your excellent Administration, the Succession in the Protestant Line, the Support and Honour of the Church of England, as established by Law, with that Toleration which is by Act of Parliament allowed to Protestant Dissenters, shall be our constant Care and Concern: And we will, upon all Occasions, venture all that is dear to us, in Defence of such inestimable Blessings."

Great Exceptions were taken to the Address; and it was moved, That it might be re-committed, because the Committee had exceeded their Commission, which was only to return Her Majesty Thanks for her most gracious Answer; but they had taken upon them in this Address, to state the whole Matter of the Impeachment, and to give their Opinions upon it; which was not only irregular, contrary to the Orders of the House, but prejudging a Case then depending before another Judicature. And in the last Paragraph there was a Promise, to venture all that was dear to them, in Defence of the Toleration, as well as of the Church of England. This was said to be putting both upon a Level, upon an equal Foot, which as many Gentlemen could not think proper, and never intended, so it was not true; for though they should be always willing to



to maintain the Toleration, yet they would not venture so much for that, as for the Church of *England*. But all these Exceptions were overruled; and though the Address was drawn up manifestly contrary to the Rules and Orders of the House, yet the Majority agreed to it, as it was reported.

The Trial proceeded, and the Lords gave their Votes *seriatim*, *Whether Dr. Henry Sacheverell was guilty of High Crimes and Misdemeanours, charged upon him by the Impeachment of the House of Commons?* And a Majority voted him Guilty.

March 21.

*Resolved,*

That the Thanks of this House be given to the Members who were appointed the Managers of the Impeachment against *Dr. Henry Sacheverell*, for their faithful Management, in the Discharge of the Trust reposed in them.

And Mr. Speaker gave them (they standing up in their Places) the Thanks of the House accordingly.

There was no Precedent pretended for this, besides the giving the Thanks of the House to the Attorney-General, *Sir Heneage Finch*, (afterwards Lord Chancellor, and Earl of *Nottingham*;) and the Motion was farther supported by some Encomiums on the Managers Performances. This Matter was opposed by several Gentlemen, who shewed a wide Difference betwixt this Case and that of my Lord Chancellor *Nottingham*, who had the Thanks of the House for maintaining their Rights and Privileges at a Conference between the Two Houses, in 1671, concerning the Commons sole Right of giving Money; which was the more remarkable, because he was, at first, of Opinion, That in the particular Point then in Controversy, the Commons were in the Wrong. But the House having determined against his Opinion, and appointed him to be a Manager at the Conferences, he applied himself to the searching the Records; and with indefatigable Labour and Study, discovered such Precedents, and so strenuously supported the Commons Right, that the Commons thought it proper to make him that honourable Acknowledgement. It was also urged, That there were Managers upon former Trials, that had not the Thanks of the House: And though these Gentlemen might have done their best in the Discharge of the Service the House required from them, yet they deserved not such Distinction. Many declared, the Managers did not speak their Sense, and that they could not approve what they had advanced, particularly, in justifying Resistance, and declaring against Passive Obedience and Non-Resistance, which was the Doctrine of the Gospel, and of the Church of *England*, and unalterably established by the Union of the Two Kingdoms; and some of them denied the Queen's Hereditary Right, affirming that she had only a Parliamentary Right; and that as to the Hereditary Right, the Pretender had a much better Title to the Throne. That in these Instances, they exceeded their Commission, which could not be understood to allow them in any thing more, than speaking in Defence of the Resistance at the Revolution, much less to meddle with the Queen's Title, which gave Offence to many that heard them.

Another Reason against giving them Thanks, was, because of their railing and reviling Language to the Doctor, unbecoming any Council in a Criminal Prosecution, and much unbecoming Managers of the House of Commons. In which it was hard to say, whether they shewed more Bitterness or Inconsistency.

And because of their giving up the Honour of the House, in suffering of *Mr. Dolben* to explain himself, when the Lords required it. In which Case, he should not have complied, without consulting the House, and taking their Directions.

And one Gentleman spoke to this Effect, just before the Question; That though he was against giving them the Thanks of the House, yet he could not forbear mentioning one Reason for it, that had been omitted by others, but was, in his Opinion, stronger than any they offered; and that was, because he was sure they would have Thanks no where else.

There was a Division of the House, the Yea's were 175, No's 116; and it was observable, that in this Question, all the Managers present in the House (except *Mr. Dolben*, whose singular Modesty was the more remarkable) voted for their having Thanks.

March 22.

A Message from the Lords by *Mr. Rogers* and *Mr. Hiccocks*, That the Lords had commanded them to acquaint this House, that their Lordships are now ready to give Judgment against *Dr. Henry Sacheverell*, if this House, with their Speaker, will come and demand the same.

*Resolved,*

That this House will demand Judgment of the Lords against *Dr. Henry Sacheverell*.

Some Gentlemen spoke against demanding Judgment, laying down these Positions.

That the Lords could not give Judgment, unless the Commons demanded it: And that the Commons were at Liberty, whether they would demand it or not, according to the Reason given by the Commons, when they insisted to be present at the Trial of the Earl of *Strafford*, as a Committee of the whole House, *That they held it fit and necessary, that all the Members should be present at the Trial, to the End, every one might satisfy his own Conscience, in the giving his Vote to demand Judgment:* And when that Trial was over, no Judgment was demanded. In the present Case, they were against demanding Judgment, because of the Precedent of this Proceeding, which might be very dangerous to innocent Men hereafter; for none could be safe, if meer Innuendo's, the most forced and strained Constructions, and Passages misapplied, should be admitted for Evidence. They thought, the Lords had made dangerous Precedents, in taking upon them to declare the Law and Usage of Parliament, without one Precedent for it, and directly contrary to many; for the Case of *Dr. Manwaring* could not be a Precedent, he submitting, and pleading Guilty. The Lords also put the Question of *Guilty* upon all the Articles together, which is such a complicated Question, they could not give their Votes freely; and it was said to be a Reason, why some of them did not vote: And the Lords, who are both Jury and Judges, were not under the Obligation of an

an Oath, or upon their Honour. To these Reasons, one other was added, That it would be a great Reflection on this Parliament, to have, in the same Session, one of the Ministers of the Church of England suffered to lie in Prison without Relief, upon his Complaint, for reading her Prayers; and to have another punished for preaching her Doctrines.

These Arguments were urged against demanding Judgment, by those Gentlemen that opposed the Prosecution in every Step of it; but some of those that had been forward in it, were now against demanding Judgment, out of great Displeasure and Indignation at the Judgment they heard was to be given; which they called a scandalous, ridiculous Judgment, and a Reflection upon the Proceeding; and therefore they were against demanding Judgment. And it is said, several of those Gentlemen withdrew, and would not vote in this Question. The House divided upon it; the Yea's were 165, No's 117.

March 23.

Then the Commons, with their Speaker, went up to the Bar of the House of Lords, and, by their Speaker, demanded Judgment against Dr. Henry Sacheverell: And being returned, Mr. Speaker reported, That he had, in the Name of the Knights, Citizens, and Burgeſſes, in Parliament assembled, and of all the Commons of Great-Britain, demanded Judgment of the Lords against Dr. Henry Sacheverell, for High Crimes and Misdemeanours, for which he was impeached.

The Judgment was,

*That Henry Sacheverell, Doctor in Divinity, shall be, and is hereby enjoined not to preach during the Term of three Years next ensuing. That Dr. Henry Sacheverell's Two printed Sermons, referred to by the Impeachment of the House of Commons, shall be burnt before the Royal-Exchange, in London, between the Hours of One and Two of the Clock, on the 27th of this Instant March, by the Hands of the common Hangman, in the Presence of the Lord-Mayor, and the Two Sheriffs of London and Middlesex.*

*A LIST of the LORDS, who protested against some Proceedings, in relation to the Case of Dr. Henry Sacheverell, in the House of Peers; with their Lordships Reasons for entering their Protests.*\*

Die Martis 14 Martii, 1709.

THE Question was put,

*That by the Law and Usage of Parliament in Prosecutions, by Impeachments for High Crimes and Misdemeanours, by Writing or Speaking, the particular Words supposed to be Criminal, are not necessary to be expressly specified in such Impeachments.*

It was resolved in the Affirmative.

*Dissentient,*

1. Because we conceive the Law of the Land is as much the Rule of Judicature in Parliament, as it is in the inferior Courts of Justice; and since, by the Opinion of all the Judges in all Prosecutions, by Information, or Indictment, for Writing or Speaking, the particular Words supposed to be Criminal must be expressly specified in such Information or Indictment; and that this is the Law of the Land, confirmed by constant Practice; we conceive that there is the same Reason and Justice for specifying in Impeachments, the particular Words supposed to be Criminal; for otherwise, a Person who is innocent and safe by the Law, out of Parliament, may, nevertheless, be condemned in Parliament: For we conceive, that some Reasons of Law and Justice, why the Words supposed Criminal, must be specified in Informations and Indictments, may be, that the Party accused may certainly know his Charge, and be thereby enabled to defend his Innocence; that the Jury may know it too, and be enabled thereby the better to apply the Evidence given by the Witnesses, to the Matter of such Charge; and that the Judges themselves may the better judge of the Nature of the Crime, and of a Punishment adequate to it, which, in Cases of Misdemeanour, which are indefinite and innumerable, must extremely vary, according to the Heinousness of the Offence; and finally, that the House of Lords, upon Complaint to them, may also judge whether the Fine, which is usually one of the Punishments for Misdemeanours, does not exceed the Demerit, especially, since by the Bill of Rights, exorbitant Fines are declared to be illegal; which Reasons seem to be fully as strong in the Case of Impeachments, as in Indictments and Informations; for the particular Words are as necessary to enable the Lords to determine uprightly, and impartially, as the Jury or Judges, and as necessary for the Defence of the accused here, as in the Courts below; and if there was to be a Difference, it seems more necessary in this High Court; for the weightier the Prosecution is, the more need has an unfortunate Man of Indulgence, and all lawful Favour; and surely, there cannot be a heavier Load upon any Man, than an Accusation of all the Commons of Great-Britain.

2. We do not remember any Precedent insisted on for the Maintenance of this Resolution, save only the Case of Dr. Manwaring, which we conceive could not warrant this Resolution. For, 1. The Words charged upon him by the Commons Declaration, were not compared with the Sermons, though it was desired, and consequently, no Lord could say, they were not the Words of the Sermon; and therefore, upon such Uncertainty, we conceive, we could not ground a positive Resolution. 2. The Charge upon him, taken out of his Sermon, on the 4th of May, 1628, seems to be the very Words by him spoke; for they were attested by Ear-Witnesses, who surely never were, or could be admitted, to attest their own Conjectures of the Scope of a Sermon, and not specify the very Words, for that would be to make the Witnesses to be the Judges.

*Buckingham,  
Jo. Ebor.  
H. London,  
Hamilton,  
Berkeley  
Stratton,  
Northeske,  
Dartmouth,  
Tho. Rossen.  
Geo. Bath  
and Wells,  
Mar,  
Haverſham.*

\* These are omitted in the Trial, and should be read after Page 836, Vol. 5.



3. Besides, in such a Case as this, where the Party did not insist on any legal and just Exceptions, of which he might have taken Advantage, if he had made his Defence, which he did not, but submitted and begg'd Pardon; this ought not to be look'd upon as a Precedent, or Authority, to justify the Illegality of the Form of that Impeachment.

3. But although this Precedent was full, and exprefs to the Point resolv'd, we humbly conceive, That one Precedent is not sufficient to support a Law and Custom of Parliament; nor consequently, a Resolution declaring it, for surely there is a great Difference between a single Instance, and a Law and Custom, especially.

4. Since we conceive, that in all the Precedents, at least all that have appear'd to us, for four Hundred Years, of the Prosecutions in Parliament, the particular Words charged as criminal, have been constantly exprefs'd in the Articles, or Declarations of Impeachment.

Ed. 2. *Exilium Hugonis le de Spencer Patris & Filii.* The 1st Article was for making a Bill in writing, the Tenour whereof was particularly set forth.

26 H. 8. *William de la Pool, 6 Art.* was for Words spoken by him, sitting in the Council in the Star-Chamber, viz. That he said, He had a Place in the Council-House of the French King, as he had here; and was as well trusted as he was here, and could remove from the French King, the privyest Man of his Council, if he would.

1640. Lord Finch. The Opinions he delivered are set forth in *hæc Verba*, as

5. also the Times when he deliver'd them.

7. Another Opinion delivered by him in the Exchequer-Chamber, and Western Circuit, is set down in his exprefs Words.

1640. Dr. Cofens. He is charged with Art. 11. Words, delivered in a Sermon at *Durham*. The Words were these, *The Reformers*, &c.

19. Charges him with Words in like manner. The Words were these, *The King*, &c.

1641. Judge Berkley. The Words charged Art. 1. upon him are exprefsly mentioned.

4. That he subscribed an Opinion, in *hæc Verba*.

5. Which are specified.

6. The Matter therein charged, though of Record, was copied and delivered with the Articles.

7, 8. The Words spoken, and the Place, exprefsly set forth.

1641. Judge Crawley. For subscribing and Art. 1, 2, 3. giving Opinions, set forth in *hæc Verba*.

1641. Herbert. For exhibiting Articles against the five Members; which Articles follow, in these Words, &c.

1641. Thirteen Bishops impeached for making and promulging, in 1640, several Constitutions and Canons, contrary to the King's Prerogative, &c.

They demurr'd, because the Charge was general; but receded from this Demur, because it appeared to be particular.

Earl Strafford. Expresses the Words 1641. spoken by him, and the Time. Art. 2.

Expresses the very Words spoken 4, 20, 21, 22. by him.

Is in like Manner, with an Innue- 23, 24, 25, do of his Meaning. 26, 27.

Archbishop Laud. Expresses the 1642. Words spoken by him. Art. 1, 4, 10.

Expresses the Words spoken by 2. him, and the Time and Place. So necessary did the Long Parliament itself think it to pursue the Forms of Law in all their Prosecutions.

Upon the whole, therefore, we conceive, That so great a Number of Precedents is sufficient to out-weigh the single Instance of Dr. *Manwaring's* Case, how apposite soever it might seem to be to the present Case, which, for the Reasons which we have mentioned, is far from being plain and clear, or having the full Authority of a Precedent: And the Law and Custom of Parliament, as we conceive, is to be determined by constant Course and Practice, and not one Precedent, occasioned by such odious Doctrines as those of Dr. *Manwaring's*: Nor can the contrary Assertion to the abovesaid Resolution be of any ill Consequence to Impeachments by the Commons; because it is easy for them to specify the Words which offend them, but extremely difficult for the Accused to defend himself, without knowing them: And as all, who are charged criminally, have Leave to make their Defence, so they should also have allow'd them all lawful Means for it.

Jo. Ebor.

Scarsdale,

Anglesey,

Abingdon,

Weymouth,

Conway,

Willoughby, Br.

Guilford,

H. London,

Leeds,

Sussex,

Nottingham,

N. Duresme,

Rochester,

Scarborough,

W. Cestriens.

Osborne,

Guernsey,

Lempster,

Thanet,

Denbigh,

Plymouth,

Northampton,

North and Grey,

Craven,

R. Fekers,

Beaufort,

Yarmouth,

Berkshire,

Jersey,

Stawell,

Howard.

Die Jovis 16 Martii, 1709.

The Order of the 14th Instant being read, for taking into Consideration the Impeachment of Dr. Henry Sacheverell, Article by Article:

And it being moved to declare, that the Commons had made good the first Article against Dr. Henry Sacheverell;

After a long Debate thereupon,  
This Question was proposed;

That the Commons have made good their first Article of Impeachment against Henry Sacheverell, Doctor in Divinity.

And a further Debate thereupon,  
This Question was put;

Whether this Question shall be now put?

It was resolved in the Affirmative.

Dissem-

*Dissentient,*

Because we humbly conceive, there are no Reflexions therein contained on the Memory of the late King *William*, nor the Revolution; and that there is no Offence charged therein upon Dr. *Sacheverell*, against any known Law of the Land.

<i>Jo. Ebor.</i>	<i>Osborne,</i>
<i>Wemys,</i>	<i>Northesk,</i>
<i>Suffolk,</i>	<i>Tbo. Roffen.</i>
<i>Shrewsbury,</i>	<i>Northampton,</i>
<i>Poulett,</i>	<i>Mar,</i>
<i>Beaufort,</i>	<i>Leigh,</i>
<i>Denbigh,</i>	<i>Weston,</i>
<i>Stawell,</i>	<i>Chandos,</i>
<i>Yarmouth,</i>	<i>Guernsey,</i>
<i>R. Ferrers,</i>	<i>Hamilton,</i>
<i>N. Duresme,</i>	<i>Berkshire,</i>
<i>Scarsdale,</i>	<i>Thanet,</i>
<i>Howard,</i>	<i>Scarborough,</i>
<i>Berkley, Str.</i>	<i>Nottingham,</i>
<i>Say and Sele,</i>	<i>North and Grey,</i>
<i>W. Cestriensf.</i>	<i>Conway,</i>
<i>Willoughby, Br.</i>	<i>Leominster,</i>
<i>Ormond,</i>	<i>Abingdon,</i>
<i>Anglesea,</i>	<i>Geo. Bath and Wells,</i>
<i>Rockefter,</i>	<i>Phymouth,</i>
<i>Buckingham,</i>	<i>Guilford,</i>
<i>Craven,</i>	<i>H. London,</i>
<i>Weymouth,</i>	<i>Dartmouth,</i>
<i>Suffex,</i>	<i>Haversham,</i>
<i>Lexington,</i>	<i>Leeds.</i>

Then the main Question was put;

*That the Commons have made good their first Article of Impeachment against Henry Sacheverell, Doctor in Divinity.*

It was Resolved in the Affirmative.

*Dissentient,*

Because by the Laws of the Land, the Laws of Parliament, and the inherent Right of Peerage, every Peer is to judge for himself, both of the Fact, as well as of the Law, and cannot be precluded by any Majority; which indeed must determine the Case in respect of the Criminal; but never did nor can preclude any Lord from voting the Party accused Guilty or Not Guilty of the Fact, as well as of the Crime of such Fact.

<i>Suffex,</i>	<i>Guernsey,</i>
<i>Northampton,</i>	<i>Craven,</i>
<i>Yarmouth,</i>	<i>Leeds,</i>
<i>Scarborough,</i>	<i>Beaufort,</i>
<i>W. Cestriensf.</i>	<i>Scarsdale,</i>
<i>North and Grey,</i>	<i>Rockefter,</i>
<i>Thanet,</i>	<i>Jersey,</i>
<i>Denbigh,</i>	<i>R. Ferrers,</i>
<i>Weymouth,</i>	<i>Phymouth,</i>
<i>Stawell,</i>	<i>Osborne,</i>
<i>Conway,</i>	<i>Leigh,</i>
<i>Howard,</i>	<i>Abingdon,</i>
<i>Geo. Bath and Wells,</i>	<i>Ashburnham.</i>

To the Questions upon the second, third, and fourth Articles we dissent, for the same Reason as is given against the Question upon the first.

<i>Buckingham,</i>	<i>Conway,</i>
<i>Berkshire,</i>	<i>Osborne,</i>
<i>Nottingham,</i>	<i>Weston,</i>
<i>Rockefter,</i>	<i>Guilford,</i>
<i>Weymouth,</i>	<i>Lexington,</i>
<i>Howard,</i>	<i>W. Cestriensf.</i>
<i>H. London,</i>	<i>Geo. Bath and Wells,</i>
<i>Haversham,</i>	<i>Beaufort,</i>
<i>Ormond,</i>	<i>Denbigh,</i>
<i>Willoughby, Br.</i>	<i>Yarmouth,</i>
<i>Guernsey,</i>	<i>Jersey,</i>
<i>Jo. Ebor.</i>	<i>Thanet,</i>
<i>N. Duresme,</i>	<i>Phymouth,</i>
<i>Hamilton,</i>	<i>Northampton,</i>
<i>Suffex,</i>	<i>Leigh,</i>
<i>Scarsdale,</i>	<i>Anglesea,</i>
<i>Stawell,</i>	<i>Craven,</i>
<i>Poulett,</i>	<i>Dartmouth,</i>
<i>Abingdon,</i>	<i>Tbo. Roffen.</i>

*Die Sabbati 18 Martii, 1709:*

It is ordered by the Lords Spiritual and Temporal, in Parliament assembled, That the Question to be put to each Lord in *Westminster-Hall* shall be,

*Is Henry Sacheverell, Doctor in Divinity, Guilty of High Crimes and Misdemeanours, charged on him by the Impeachment of the House of Commons? And the Answer thereunto shall be, Guilty, or, Not Guilty, only.*

*Dissentient,*

1. Because we do humbly conceive, that the obliging every Lord to answer generally, *Guilty*, or *Not Guilty*, to a Question containing all the Articles of this Impeachment, is a kind of Tacking upon ourselves, by an unnecessary joining of Matters of a different Nature, and subjecting them to one and the same Determination; and consequently may prejudice the Right every Peer has to give a free Affirmative, or Negative; since whoever thinks Dr. *Sacheverell* guilty of one Part, and innocent of the other, will be obliged either to approve what he condemns, or condemn what he approves.

*Buckingham,*  
*Hamilton,*  
*Mar,*  
*Lexington,*  
*Dartmouth,*  
*Northesk,*  
*Jo. Ebor.*  
*W. Cestriensf.*  
*Tbo. Roffen.*  
*N. Duresme,*  
*Shrewsbury.*

2. We do humbly conceive, there is at least a Possibility, that though a Majority of the House, if admitted to vote to the Articles separately, may think him innocent upon each Article; yet, by this Method of a general Answer, he may be condemned of all; which seems not to be consistent with the usual Method of Justice in this House.

3. We do humbly conceive, that since the Judgment of the House in this Case ought to be a Declaration of the Law, the Condition of the People will be most miserable, to have Punishment inflicted for High Crimes and Misdemeanours, and not to have a Possibility of informing themselves what the High Crimes and Misdemeanours thereby punished are; for the People's only Guide is the Law; and they can never be guided



guided by what they can never be informed of: And we do humbly conceive, that this Uncertainty being in the Case of a Clergyman, for Preaching, it may possibly create some Fear in good Men, when they preach some Doctrines of the Church of *England*, particularly that of Non-Resistance; and may be made use of by ill ones, as an Excuse for the Neglect of that Duty, which, upon some Occasions, is required of them, even by the Laws of the Land.

Ormond,  
Scarsdale,  
Denbigh,  
Leeds,  
Nottingham,  
Stawell,  
Weymouth,  
Craven,  
Osborne,  
Willoughby, Br.  
Haversham,  
Geo. Bath and Wells,  
Beaufort,  
Anglesea,  
Northampton,  
Leominster,  
H. London,

R. Ferrers,  
Poulett,  
Howard,  
Plymouth,  
Guilford,  
Leigh,  
Berkshire,  
Thanet,  
Yarmouth,  
Rochester,  
Suffex,  
North and Grey,  
Abingdon,  
Jersey,  
Conway,  
Weston,  
Guernsey.

*Die Lune 20 Martii, 1709.*

The House, pursuant to the Orders of Saturday last, adjourned into *Westminster-Hall*.

And being there, the House was resumed, and the Lord Chancellor declared, That the Lords had agreed upon a Question to be put to each Lord severally.

Then his Lordship put the Question, beginning at the Junior Baron first, as follows:

*Is Dr. Henry Sacheverell guilty of High Crimes and Misdemeanours, charged upon him by the Impeachment of the House of Commons?*

And having asked every Lord present, and they having declared, *Guilty*, or, *Not Guilty*, his Lordship having cast up the Votes, declared him *Guilty*.

*Dissentient,*

Suffex,  
Thanet,  
Nottingham,  
Craven,  
Northesk,

North and Grey,  
Leigh,  
Jersey,  
Hamilton,  
Beaufort.

Weston,  
Ormond,  
Berkshire,  
N. Duresme,  
Sbrevsbury,  
Scarborough,  
Leeds,  
Yarmouth,  
Jo. Ebor.  
Leominster,  
Northampton,  
Willoughby, Br.  
Abingdon,  
Poulett,  
H. London,  
Guernsey,  
Geo. Bath and Wells,  
Say and Sele,  
Osborne,

Plymouth,  
Cbandos,  
W. Cestriensf.  
Buckingham,  
Rochester,  
Mar,  
Weymouth,  
Guilford,  
Conway,  
Anglesea,  
Scarsdale,  
Dartmouth,  
Denbigh,  
Howard,  
Tho. Roffen,  
Berkeley Str.  
Stawell,  
Lexington.

*Die Martis 21 Martii, 1709.*

*Ordered,*

That the Judgment to be passed in the Case of Dr. Henry Sacheverell shall be,

*That he be enjoined not to preach during the Term of three Years next ensuing: That his two printed Sermons, referred to by the Impeachment of the House of Commons, shall be burnt before the Royal-Exchange in London, between the Hours of and , on the Day of , by the Hands of the common Hangman, in the Presence of the Lord-Mayor, and the two Sheriffs of London and Middlesex.*

*Dissentient,*

Jo. Ebor.  
Scarsdale,  
Northampton,  
Craven,  
Howard,  
North and Grey,  
Scarborough,  
N. Duresme,  
Weymouth,  
Geo. Bath and Wells,  
Guilford,  
Buckingham,  
Berkshire,  
Abingdon,  
Conway,  
Yarmouth,

H. London,  
Plymouth,  
Tho. Roffen,  
Guernsey,  
Leominster,  
Denbigh,  
Nottingham,  
Thanet,  
Osborne,  
Beaufort,  
Anglesea,  
Suffex,  
R. Ferrers,  
Leigh,  
Poulett,  
Asburnham.



N U M B E R XXXVII.

*The following Address, and Opinions, being authentick, are, it is conceived, of Importance enough to give them a Place in this Collection. The Address was presented by the Lord Bishop of Litchfield and Coventry, and the Lord Bishop of Ely, April 17, 1711, 10 Annæ.*

To the Queen's most Excellent Majesty,  
*The humble ADDRESS of the Archbishop and Bishops of the Province of Canterbury, in Convocation assembled.*

*May it please Your Majesty,*

**W**HEREAS one *William Whiston*, a Presbyter of the Church of *England*, and late Professor of Mathematicks in the University of *Cambridge*, who was, in *October* last, expell'd the said University, for asserting and spreading Abroad divers Tenets, contrary to Religion received and established by publick Authority in this Realm, has since that Time, and a little before the sitting of this present Convocation, printed and published an *Historical Preface* to other Writings of the same pernicious Design, intended for the Press, in which he has advanced several damnable and blasphemous Assertions against the Doctrine and Worship of the Ever-Blessed Trinity: Expressly contradicting the Two Fundamental Articles of the *Nicene Creed*; and defaming the whole *Athanasian*; and has had the Confidence to inscribe and direct the said printed Preface to the Convocation now Assembled:

And whereas we take ourselves to be both bound in Duty to God, and to his Holy Truths, and in Obedience to Your Majesty's pious Intentions signified to us with Your Gracious License, to repress the said *Blasphemy*; and also obliged in Vindication of our firm Adherence to the true Faith, and for the Preservation of the same in the Members of our Communion, to call the said *William Whiston* before us, in order either to his Amendment, or Exclusion from the Communion of the Church of *England*; but do yet find ourselves hindered from going on, by some Doubts arising among ourselves concerning our Power so to act and proceed:

For that the Court of Convocation being Final, or the last Resort, from which no Appeal is provided by the Statute made in the 25th Year of *Henry* the Eighth, Chap. 19. it may seem to be doubtful how far a Prosecution, without Appeal to the Crown, will be consistent with the Statute made in the first Year of *Queen Elizabeth*, Chap. 1. Sect 17. whereby all Jurisdiction, and particularly for Reformation of Errors, Heresies, and Schisms, is united and annex'd to the Imperial Crown of this Realm; and also how far it will be consistent with the Statute of Appeals, made in the 25th Year of *Henry VIII.* Chap. 19.

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which, in the Course of the Appeals directed to be henceforth made, doth not mention Convocation. May it please Your most gracious Majesty, out of Your known Zeal for the Honour of God, and the Good of his Church, to lay this Case before Your Reverend Judges, and others whom Your Majesty in Your Wisdom shall think fit, for their Opinion, How far the Convocation, as the Law now stands may proceed in Examining, Censuring, and Condemning such Tenets as are declared to be Heresy by the Laws of this Realm; together with the Authors and Maintainers of them.

*Upon this Address to the Queen, Her Majesty was pleased to refer the whole to the Twelve Judges, and to her Attorney and Solicitor-General; who being several Times assembled together, and debating the Matter, came to the following Resolutions.*

To the Queen's most Excellent Majesty.

*May it please Your Majesty,*

**I**N humble Obedience to Your Majesty's Royal Command, signified to Your Judges by the Right Honourable the Lord Keeper; We whose Names are subscribed have considered the Questions mentioned in the Address hereunto annexed, and are humbly of Opinion, That since the Statute of 23d of *Henry VIII.* against Citing out of the Diocese, and those Statutes of the 24th and 25th Years of the same Reign, touching Appeals, and as the Law now stands, the Convocation hath not any Jurisdiction originally to cite before them any Person for Heresy, or any other Spiritual Offence, which according to the Laws of the Realm may be cited, censured, and punished in the respective Ecclesiastical Courts or Jurisdictions of the Archbishops, Bishops, and other Ordinaries; who, we conceive, have the proper Judicature in those Cases; and from whom and whose Courts the Parties accused may have their Appeals; the last Resort wherein is lodged in the Crown. In which Statute for Citing out of the Diocese, and in the others, as far as relates to Appeals for such Offences, no Notice is taken of the Convocation, either as to Jurisdiction, or Appeals. Nor doth it any way appear to us in whom the pretended judiciary Power of a Convocation, either before or since the said Statutes, (if any such they ever had,) resided; whether in the whole Body of the Convocation,



or in Part. But it is plain by the first Statute, That the Archbishop's Jurisdiction, even in Case of Heresy, is bounded so that he cannot proceed against such Offenders within any other Diocese than his own, without the Consent, or in the Default of the Diocesan Bishops. All which Statutes being made for the Ease and Benefit of the Subjects, they cannot, as we humbly conceive, be deprived of the Benefit of them by any Pretence of Jurisdiction in the Convocation; from which we cannot find or be inform'd of any Instance of Appeal. Nor have any Judicial Precedents or Authorities for Convening or Censuring of such Offenders in any Convocation since those Statutes, or the Reformation, (which is now near 180 Years,) appear'd unto us. And if such Power should be allow'd to the Convocation, we conceive it would invade the ordinary Jurisdiction of the Archbishops and Bishops; which we conceive are preserved by the Act of Parliament made in the 17th Year of the Reign of his late Majesty King *Charles* the First, *Chap.* 11. and by another made in the 13th Year of King *Charles* the Second, *Chap.* 12. and by the Act made the 29th *Car.* 2d, *Chap.* 9. which took away the Writ *De Heretico Comburendo*; in none of which any Mention is made of the Convocation. And by the *Bill of Rights*, 1 *Wilh. & Mar.* it is enacted, That the Commission for erecting the late Court of Commission for Ecclesiastical Causes, and all other Commissions and Courts of like Nature, are illegal and pernicious. But we conceive that Heretical Tenets and Opinions may be examined and condemn'd in Convocation, authorized by Royal License, without convening the Authors or Maintainers of them. All which we most humbly submit to Your Royal Majesty's Great Wisdom.

May 5th, 1711. *Edw. Ward, Jo. Blencowe,*  
*Rob. Dormer, S. Lovell.*

The other Paper here follows.

*May it please Your Majesty,*

**I**N Obedience to Your Majesty's Commands, signified to us by the Right Honourable the Lord Keeper of the Great Seal, in relation to the Humble Address of the Archbishop and Bishops of the Province of *Canterbury*, in Convocation assembled, hereunto annex'd; We whose Names are hereunto subscribed, have taken into Consideration the Doubts and Questions therein stated.

And after Conference with the rest of the Judges, We are humbly of Opinion, that of Common Right there lies an Appeal from all Ecclesiastical Courts in *England* to Your Majesty, in virtue of Your Supremacy in Ecclesiastical Affairs, whether the same be given by express Words of any Act of Parliament, or not: And that no Act of Parliament has taken the same away. And consequently, that a Prosecution in Convocation, not excluding an Appeal to Your Majesty, is not inconsistent with the Statute of 1 *Eliz.* *Chap.* 1. but reserves the Supremacy entire.

As to the Question proposed in the said Address, How far the Convocation, as the Law now stands, may proceed in Examining, Censuring, and Condemning such Tenets as are declared to be Heresy by the Laws of this Realm, together with the Authors and Maintainers of them, we understand it to import only these two Things: Whether a Jurisdiction to Examine, Censure, and Condemn such Tenets, and the Authors and Maintainers thereof, could ever be exercised in Convocation? And if it could, Whether it be taken away by any Act of Parliament?

And We humbly lay before Your Majesty, That all our Law-Books that speak of this Subject, mentioning a Jurisdiction in Matters of Heresy, and Condemnation of Hereticks, as proper to be exercised in Convocation, both before and since the Acts of Parliament mention'd in the Address; and none of them, that we find, making any Doubt thereof; and we observing nothing in those, or any other Acts of Parliament, that we think has taken it away; We are humbly of Opinion, That such Jurisdiction, as the Law now stands, may be exercised in Convocation.

But this being a Matter which, upon Application for a Prohibition, on behalf of the Persons who shall be prosecuted, may come in Judgment before such of us as have the Honour to serve Your Majesty in Places of Judicature; we desire to be understood to give our present Thoughts, with a Reserve of an entire Freedom of altering our Opinions, in case any Records, or Proceedings, which we are now Strangers to, shall be laid before us, or any new Considerations which have not occurred to us, be suggested by the Parties, or their Council, to convince us of our Mistake.

*T. Parker, L. Powys, Ro. Price, E. Northey,*  
*T. Trevor, T. Bury, R. Eyre, Ro. Raymond,*  
*J. Powell, R. Tracy,*



N U M B E R XXXVIII.

*A Declaration, sign'd by ARCHIBALD HUTCHESON, Esq; and given to several of his Acquaintance, soon after he had perused the Examination of Christopher Layer, in the Appendix to the Report of the Secret Committee; in which Layer has made Mention of his Name, as one of Burford's Club, which the said Layer, in his Examination, saith, he was told by one Plunket. \**

March 4, 1722-3.

HAVING read Part of the Examination of Layer, of the 19th of January, and 4th of February last, in the Appendix to the Report of the Secret Committee; in which Layer is mention'd to have said, that one Plunket told him, as explaining what was meant by Burford's Club, That Lord Orrery was Chairman, and that this Club met Monthly, at one another's Houses, as Layer thought; and that Plunket told him, That there were Eight other Lords, and Six Commoners (whose Names he mentions, and mine as one of them,) of that Club: I do hereby declare, upon the Honour of a Gentleman, That I do not know, or believe, that there was a Club, or Meeting, of any of the Lords or Gentlemen mention'd in the said Examination; nor have I ever heard of any Meeting where Lord Orrery was present, except that which was carried on in the Two last Sessions of Parliament, when Lord Orrery, and several Lords and Gentlemen, (not mention'd in Layer's Examination,) met Weekly, and, I believe, with great Innocence, dined at one another's Houses. And I do further affirm, That even on accidental Visits, I have seldom met together any Two of the Lords and Commoners so mention'd in Layer's Examination: That there are Two of these Commoners, (Sir Henry Goring, and Mr. Dawkins,) whose Faces I do not know; and Two others, (General Webb, and Sir Constantine Phipps,) between whom and me there has not been, for Fifteen Years last past, the Intercourse even of Ceremonial Visits, and between me and the Fifth Commoner, (Mr. Shippen,) but very seldom: That there are Three of those Lords, (Scarsdale, Craven, Gower,) with whom I have very little Acquaintance; a Fourth, (Lord Bingley) whom I have never met any where, but in Visits to others, or in publick Places; and a Fifth, (the Bishop of Rochester) in whose Company I have been but twice in Three Years Time. I mention this, to shew the notorious Falshood of Layer's Hear-

say Evidence of Burford's Club; an Appellation I never heard of, 'till some Time after the Appointment of the Secret Committee.

ARCH. HUTCHESON.

*The Declaration of William Earl Cowper; shewing, That the Matters contain'd in some Hear-says, relating to him, in the Examinations of Christopher Layer, are false and groundless.*

March 20, 1722-3.

THOUGH Hear-say does not affect any one, either in Law, or Reason, yet it deserves Contradiction, where the Truth will bear it, especially if printed: And therefore, finding that Layer, in his Examinations of the 19th of Jan. and fourth of Febr. last, hath said, That one Plunket told him, (as explaining what was meant by Burford's Club,) that Lord Orrery was Chairman; and that Lord Cowper, and Seven other Lords, and Six Commoners named, were of that Club; and that this Club met Monthly; as he, Layer, thought, at one another's Houses; and not doubting but my Averment will be believed before any Hear-say, especially from one in Layer's sad Circumstances: I do hereby Declare and Affirm upon my Honour, That I do not know, or believe, and never heard, before the said Examinations were talk'd of, that there was any such Club, or Meeting: That as to Three of the Commoners named, viz. Sir Henry Goring, Mr. Dawkins, and Mr. Shippen, I do not know them so much as by Sight; and as for Two of the remaining Three Commoners, viz. Sir Constantine Phipps, and General Webb, I have not been in their, or either of their Companies, at any Time within Sixteen Years last past: And as to the Lords, I never met them, or any of them, but either accidentally, on Visits of Ceremony, or in the Time of Parliament, and that with other Lords, on the Business of Parliament only: And as for one of the said Commoners, whom I am acquainted with, viz. Mr. Hutche-

\* These Declarations of Mr. Hutcheson, and Lord Cowper's, should be read after the Examinations of Layer, in Vol 6. and after the Appendix to the Report relating to that Plot. People are left to make their own Observations on Layer's Hear-say Evidence.



*sen*, I never once was at any Meeting with him together with any of the said Lords or Commoners. And whereas *Laver*, in his Examination of the 19th of *September* last, said, That Lord *Orrery* told him, that Lord *Cowper* told him, (Lord *Orrery*,) that 200 Tories, and 90 Grumbletonians, would try their last Effort in the House of Commons: And in another Examination, of the 21st Day of the same Month, *Laver* repeats

the same, except that he useth the Words, *Angry Whigs*, instead of the Word *Grumbletonians*: I do hereby Declare and Affirm upon my Honour, That I never said so to Lord *Orrery*, nor to that Effect, nor any Thing like it: And I do therefore verily believe, that Lord *Orrery* never said that I did.

COWPER.



## N U M B E R XXXIX.

### *Upon the Trial of a P E E R. \**

**T**HERE is to be a Commission under the Great Seal, constituting a Lord High Steward for that Occasion.

If the Great Seal be then in Commission, a Speaker of the House of Peers is to be appointed by special Commission.

The King's Writ of *Certiorari* is to be directed to the Commissioners of *Oyer* and *Terminer*, for *Middlesex*, to remove the Indictment found before them against the Prisoner.

The Return whereof, with the Record of the Indictment, is to mention the Time of the Inquest of the Grand Jury, and when the Fact was committed.

A Precept is to be directed to the chief Governor of the Tower, to bring his Prisoner to the Court.

If the Trial be by special Commission, a Sheriff is to be appointed to summon the Lords the Tryers, and to do other Services, who is to have a white Wand.

The Lord Chamberlain of the Household (or, in his Absence, the Vice Chamberlain,) is to know when His Majesty will be attended for receiving the Lord High Steward's Staff, and delivering it to the Officers, who are to present it to the High Steward; and is to give Notice thereof to Garter King of Arms, and to the Usher of the Black Rod.

Upon this Notice, the Black Rod is to provide a White Staff, eight or nine Foot long, and he and Garter are to attend with it at the King's Bedchamber, or where His Majesty appoints, and to deliver it to the Lord Chamberlain, who is to present it to the King on his Knee; and Garter, and the Black Rod in the Bedchamber, or at the Place appointed, are to receive it jointly from the King, on their Knee, with his Majesty's Directions to whom it is to be deliver'd.

Hereupon, Garter and Black Rod are to wait upon the Lord High Steward, and to give him an Account thereof, and to know when he will please to be attended to the Trial.

On the Morning of the Trial, at the Hour appointed by the Lord High Steward, the Judges in their scarlet Robes, (unless in Time of Mourning,) together with Garter, and the Black Rod, and the Serjeant at Arms, who is to make the

Proclamations, are to assemble at the Lord High Steward's House, and are to wait on him above Stairs, or where he pleases to receive them, Garter being in his Coat of Arms, the Black Rod having the White Staff, and the Serjeant at Arms bearing his Mace, where they all have a Collation.

The Lord High Steward is to be call'd His Grace upon this Occasion, during the Trial.

After a short Stay, His Grace the Lord High Steward comes down to his Coach thus.

His Grace's Gentlemen, Two and Two, bare-headed.

His Serjeant at Arms, and Seal-Bearer, (if the Lord High Steward be Lord Chancellor, or Lord Keeper,) both bare-headed, one with the Mace, the other with the Purse.

The Black Rod with the Lord High Steward's Staff, and Garter King of Arms on his Right Hand, both bare-headed.

Then His Grace the Lord High Steward, in his usual Habit, (unless he be Lord Chancellor or Lord Keeper, and then in his rich Gown, his Train borne,) follow'd by the Chief Justices and Judges.

His Grace's Gentlemen, to the Number of Eight, Twelve, or Sixteen, as His Grace pleases, first take their Coaches without the Gate, Four in a Coach, each Coach having Two Horses only.

Then the Lord High Steward takes his Coach with Six Horses, within the Court, at the Foot of the Stairs, seating himself on the hinder Seat of the Coach singly; Garter (and the Seal-Bearer,) sitting over-against his Grace bare-headed, the Black Rod in the Right Hand Boot of the Coach, with his Grace's White Staff, and his Grace's Serjeant at Arms in the Left Boot, with his Mace.

The Judges take their Coaches without the Gate, and follow His Grace.

When the Trial is by special Commission, a Messenger is to be sent a little before, to acquaint the Lords the Tryers, (who are to assemble in, or near the House of Peers, or in the Exchequer Chamber) that His Grace is coming, in order to their taking their Seats in the Court beforehand, and then His Grace goes directly to *Westminster-Hall*, by the Way of the *New Palace-Yard*.

\* Mr. Gregory King, *Lancaster Herald*, having wrote the Method of Proceedings upon the Trial of a Peer, we thought it not improper to give it a Place here, no such Account being publish'd in the State Trials.

But if the Trial be in Parliament, they pass to the *Old Palace-Yard*, and so up the Stairs, towards the House of Peers, in this Order.

First, His Grace's Gentlemen, Two and Two.

Then eight Serjeants at Arms, Two and Two: These are to wait His Grace's Arrival at the Bottom of the Stairs.

Then His Grace's Serjeant and Seal-Bearer.

Then the Black Rod and Garter.

Then the Lord High Steward, follow'd by the Chief Justices and Judges.

Passing through the Painted Chamber, at the Upper End thereof, the Lord High Steward's Gentlemen make a Lane for His Grace, and the rest of the Proceeding to pass through. The Serjeants at Arms (all but His Grace's Serjeant) stay in the Lobby between the Painted Chamber and House of Lords, and beyond them Garter on the Right Hand, and the Black Rod with the White Staff on the Left.

The Peers are to be in their Robes, and His Grace coming into the House, (and the Mace being deposited on the uppermost Woolfack,) passes on to my Lord Chancellor's Room, or to His Grace's Chamber; where, if the High Steward be not Lord Chancellor, or Lord Keeper, His Grace puts on his Parliament Robes.

Having reposed a while, His Grace comes into the House again, and Prayers begin, after which, if the Lord High Steward have a Special Commission to be Speaker, it is to be read, and He is to take the Woolfack.

Then the Peers are to be called over by one of the Clerks Assistant, and Notice to be taken of all that are present; and then the House adjourning to *Westminster-Hall*, Garter, by His Grace's Command, summons forth the Peers present, one of the Clerks Assistant having marked a List of them, for Garter to call them over by. And the Proceeding to *Westminster-Hall* is in this manner.

His Grace the Lord High Steward's Gentlemen Attendants, Two and Two.

The Clerks Assistant to the House of Lords, and Clerk of the Parliament.

Two Clerks of the Crown in the King's Bench, and Chancery, if there.

The Masters in Chancery.

The Attorney-General, if there.

The Judges, and Chief Justices.

Peers Eldest Sons, and Peers Minors.

Four Serjeants at Arms, with their Maces, Two and Two.

The Yeoman Usher of the House of Peers.

The Lords Spiritual and Temporal, according to their Degrees and Precedencies, Two and Two. The youngest Barons first, all covered.

Four Serjeants at Arms more, with their Maces, Two and Two.

His Grace's Serjeant at Arms, and Seal-Bearer.

The Black Rod, with His Grace's White Staff, and Garter King of Arms, in his Coat of Arms, on the Right.

The Lord High Steward of *England* alone, covered.

His Royal Highness the Prince of *Wales*, if present.

Thus they pass through the Painted Chamber, Court of Requests, and Part of the Court of

Wards, through a Door between the Court of Chancery and King's Bench, into the Court in *Westminster-Hall*, where the Peers go to their Seats as in the House of Lords.

The Lord Steward's Gentlemen go to the further Side of the Throne, on the Left Hand.

The Noblemen's Eldest Sons, and Peers Minors, stand on the right Side the Lord High Steward's Chair.

The Clerk of the Parliament, and Clerks Assistant, go to their Table.

The Black Rod and Garter come before the Throne, make their Obeisance, and stand by, whilst the Lord High Steward does the like; whence His Grace, attended by all the Serjeants at Arms, and the Black Rod and Garter, having saluted the Peers, repairs to the Woolfack, and His Grace's Serjeant at Arms, goes to the End of the Clerk's Table.

His Grace taking his Place on the Woolfack, as Speaker of the House of Peers, the Lords being seated on their Benches, and the Judges and Masters in Chancery below on their Seats, Garter and the Seal-Bearer stand on His Grace's Right Hand, and the Black Rod on the Left, and the Eight Serjeants at Arms stand on each Side more behind.

The Two Clerks of the Crown are to be ready at the Clerk's Table, and to stand before it; and the Clerk of the Crown in Chancery, having the King's Commission to His Grace in his Hand, they both make three Reverences to His Grace, and at the third Reverence coming up before the Woolfack, they both kneel down, and the Clerk of the Crown in Chancery, on his Knee presents the Commission to His Grace, who delivers it to the Clerk of the Crown of the King's Bench, and they with three Reverences returning to the Clerk's Table, the Clerk of the Crown in the King's Bench, directs His Grace's Serjeant at Arms (*after thrice crying, O Yes,*) to make Proclamation of Silence, which he is to do with his Mace on his Shoulder; the said Clerk of the Crown of the King's Bench, dictating the Proclamation to the Serjeant, and then opening the Commission, reads it.

His Grace, and the Lords, stand up uncovered, whilst the Commission is reading, which His Grace is to mind the Lords that they do.

The Commission being read, and His Grace bowing, and sitting down again, Garter, and the Black Rod, with three Reverences jointly, present the White Staff on their Knees to His Grace; and thereupon being fully invested in his Office, His Grace, with the White Staff in his Hand, removes from the Woolfack, to his Chair, placed for him on an Ascent before the uppermost Step of the Throne, or State, attended by Garter, the Black Rod, and the Serjeants at Arms, and there sits down, the Seal-Bearer laying the Purse on a Stool on the Left.

Then Proclamation is to be made for all Persons but the Peers to be uncovered.

Then the King's Writ of *Certiorari* to Remove the Indictment, with the Return thereof, and the Record of the Indictment, is to be read by the Clerk of the Crown in the King's Bench.

Then the said Clerk of the Crown directs the Serjeant at Arms to make Proclamation for the Chief Governor of the Tower of *London*, to return the Precept to him directed, with the Body of the Prisoner into Court.



Whereupon the Governor, or Deputy-Governor, brings the Prisoner to the Bar, the Axe being carried before him by the Gentleman-Jailer of the *Tower*, who is to stand with it at the Bar, on the Right Hand of the Prisoner, turning the Edge from him.

The Prisoner, at his Approach to the Bar, is to make three Reverences, one to His Grace the Lord High Steward, the other two to the Peers on each Hand, and His Grace and all the Peers are to return the Salute to him. And the Black Rod is to mind the Prisoner that he kneel, 'till His Grace bids him arise, in case the Prisoner do it not of himself.

His Grace, the Lord High Steward, (that he may the better hear, and be heard,) may, with Leave of the Peers, come down upon the Woolfack, and may deliver his White Staff to the Black Rod, who is to hold it by him upright. And then the Serjeants at Arms may unshoulder their Maces.

Then His Grace may give such Directions to the Prisoner, and to the Council at the Bar, as he thinks convenient, touching the Trial; and then may address himself more particularly to the Prisoner, touching the Crime for which he stands Indicted.

After which, the Clerk of the Crown, by His Grace's Command, is to read the Indictment, to which the Prisoner is to plead, and (if he plead Not Guilty) is to put himself on his Trial by God and his Peers.

Then the Judges, with Consent of the Peers, at the Motion of His Grace the Lord High Steward, may put on their Caps.

And Proclamation being made for the King's Evidence to come forth, the King's Council, by His Grace's Direction, are to begin to open the Indictment, and to proceed to the Trial.

If any Questions arise during the Trial, that the Lords are minded to debate in their own House, the Court is to be adjourned by His Grace the Lord High Steward, to the House of Peers; and the Manner of going thither, and returning again to the Court, is to be much in the same Order as at the first coming into the Court; His Grace carrying his White Staff to the Door of the House of Lords, and there delivering it to the Black Rod to hold, 'till the Court return.

Upon any Intervals during the Trial, the Lord High Steward may have Wine and Biskets presented him on the Knee; and the Judges and Officers attending, may also have Wine and Biskets.

If the Trial last more Days than one, the Bishops are at their Election whether they will be present after the first Day.

Every Day during the Trial, the Lord High Steward is to be attended to his House, by Garter, and the Black Rod, &c. as he came at first; save that the Judges do not attend His Grace Home: And that if His Grace have four Coaches of Attendants, two of them go before him, and two of them after him. And Garter, the Black Rod, and Serjeant, every Evening during the Trial (after the Black Rod has delivered the White Staff to His Grace, at the alighting out of his Coach) attend His Grace up Stairs, His Grace entertaining them at his own Table at Supper, each Day of the Trial.

But every Morning during the Trial (if it last more than one Day) the Judges, with Garter, the Seal-Bearer, the Black Rod, and Serjeant, attend His Grace at his House, and thence to the House of Lords, (to which Place the Court is always adjourned every Night) as on the first Day, the Black Rod delivering the Staff to His Grace at the Foot of the Steps going up to the House of Lords, and receiving it again from His Grace at the Door of the House of Lords.

The Trial being over (which sometimes lasts four or five Days) the Prisoner being withdrawn, His Grace the Lord High Steward is to put the Question, Whether the Prisoner is Guilty of the Crime whereof he stands Indicted, or Not Guilty? Asking the Lords severally, beginning with the youngest Baron, and writing down their Answers; and lastly delivering his own Opinion. Every Peer upon pronouncing his Judgment, standing up uncovered, and laying his Right Hand on his Breast, and saying, Guilty (or Not Guilty) upon my Honour.

Then His Grace is to declare to the Peers how many have pronounced the Prisoner Guilty, and how many Not Guilty.

After which, the Prisoner being again brought to the Bar, and Proclamation made for Silence, His Grace declares to the Prisoner the Judgment of the Peers, and then commands Proclamation for dissolving the Commission.

The Proclamation ended, His Grace stands up, and having received the White Staff from Garter, and the Black Rod jointly, (as His Grace always does, when he receives in Court,) His Grace holding the White Staff in both his Hands, breaks it in two, and so dissolves the Commission.

Then the Lord Chancellor, or Speaker, demands the Pleasure of the Peers, whether they will then adjourn to the House of Lords, and if so, then they return thither in the former Order, (except as to the White Staff.) But if they do not adjourn thither at that Time, Garter, and the Black Rod, attend the Lord High Steward to his Coach, and so to his House, and then the Seal-Bearer and Black Rod change Places.



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